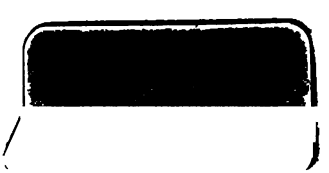
THE INSOLVENT ACT OF 1869

POPHAM



Harry Vincent

THE

INSOLVENT ACT OF 1869;

WITH

NOTES AND DECISIONS

OF THE

COURTS OF ONTARIO AND QUEBEC;

TOGETHER WITH THE

RULES OF PRACTICE AND THE TARIFF OF FEES
FOR THE PROVINCES OF ONTARIO,
QUEBEC, NOVA SCOTIA, AND
NEW BRUNSWICK.

BY JOHN POPHAM,
BARRISTER-AT-LAW.

MONTREAL:
DAWSON BROTHERS.
1870.

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IN MEMORY OF THE LATE

HENRY DRISCOLL, Q.C.,

THIS LITTLE MANUAL

IS INSCRIBED,

BY ONE WHO WAS FORMERLY HIS STUDENT,
AND IN GRATEFUL REMEMBRANCE OF
MANY ACTS OF KINDNESS
PROFESSIONALLY.

PREFACE.

AFTER a lapse of some years, an Insolvent Law was again introduced, in 1864, in the Provinces of Ontario and Quebec.

Ts this Law an Amendment Act (29 Vic. c. 18) was passed in 1865.

The Provinces of Nova Scotia and New Brunswick having since united themselves with those of Ontario and Quebec, under the name of the Dominion of Canada, it was deemed advisable by the Legislature, in 1869, to establish an uniform Insolvent Law for them all.

The present Law was therefore passed. It contains some important changes to that of 1864.

The object of this little manual is to illustrate the legal meaning of certain sections of the law chiefly by decisions of the Courts of Ontario and Quebec on analogous sections of the Act of 1864; and of others, by decisions of the English, Scotch, and French tribunals.

While, it is hoped, the Writer's work may be found useful to his legal brethren, it has been his especial desire to make it intelligible and of assistance to merchants and official assignees.

JOHN POPHAM.

67 ST. FRANCOIS XAVIER STREET,
MONTREAL, 1*st November*, 1869.

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LIST OF AUTHORITIES.

ABBREVIATION.	TITLE.
Avery & Hobbs	Avery & Hobbs,—Bankrupt Law, United States. Boston, 1868.
Arch. Bank	Archbold,—Law and Practice of Bankruptcy. London, 1856.
Abbott, Ins. Law	Insolvent Act of 1864, with Notes by Hon. J. J. C. Abbott. 1864.
Beddaride, des Faillites	Bedarride,—des Faillites et Banqueroutes, Paris. Ed. 1862.
Benjamin, Sales	Benjamin,—Contract of Sales of Personal Property. London, 1867.
Burr	Burrow's Reports.
Boulay-Paty, des Faillites	Boulay-Paty des Faillites, &c. (edited by Boileux.) Paris, 1849.
Carré	Carré, — Organization Judiciare. Bruxelles, 1846.
Chancy Rep. (Ontario)	Chancery Reports, Toronto.
Chardon, du Dol	Chardon,—du Dol et de la Fraude. Avallon. 1828.
Code Civ. Pro. L. C.	Code Civil Procedure of Lower Canada.
Civ. Code L. C.	Civil Code Lower Canada. Montreal, 1867.
Code de Com	Le Code de Commerce, Annotés de Sirey. Paris, 1865.
Cout. de Par.	La Coutume de Paris. Ed. of Ferriere.
Doria & Macrae, Bank	Doria & Macrae,—The Law and Practice of Bankruptcy. London, 1863.
Edgar, Notes Act 1864	Insolvent Act, 1864, with Notes by J. D. Edgar. Toronto, 1864.

James, Bank. Law, U. S.....Edwin James on Bankrupt Law of United States of 1867. New York, 1867.

Jousse, Com. Ord. 1673.....Jousse,—Nouveau Commentaire sur l'ordonnance de Commerce. Paris, 1782.

Kerr, Fraud.....Kerr,—on Law of Fraud and Mistake. London, 1868.

Kinnear, Bank .....Kinnear,—Law of Bankruptcy in Scotland. Edinburgh, 1862.

Leading Cases, Com. Law....Ross,—Leading Cases in Commercial Law of England and Scotland. London, 1855.

Levecque, Faillites. .....Levecque,—Faillites et Banqueroutes. Paris, 1847.

L. C. Rep.....Lower Canada Reports, Quebec.

Law and Equity Rep. .....English Law and Equity Reports. Boston edition.

L. J. (Ontario).....Law Journal of Upper Canada.

L. C. Jur.....Lower Canada Jurist, Montreal.

Nouv. Den.....Denisart,—Collection de Décisions, Nouvelles.

Namur, Droit Coml.....Cours de droit Commercial, by P. Namur. Brussels, 1866.

Pardessus Droit Coml.....Pardessus,—Cours de droit Commercial. Paris, 1831.

Poth. Ob.....Pothier,—Traité des Obligations. Paris, 1830.

Q. B. Rep. (Ont.).....Upper Canada Queen's Bench Reports, Toronto.

Rep. de Jur. (Guyot) .....Guyot, — Repertoire de Jurisprudence. Paris, 1785.

Renouard des Faillites.....Renouard,—des Faillites et Banqueroutes. Brussels, 1851.

Robertson's Digest .....Digest of the Reports published in Lower Canada to 1863, by A. Robertson, Q. C. Montreal, 1864.

Smith's Mer. Law .....Smith, Compendium of Mercantile Law. New York ed. 1850.

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ADDENDA.

Sec. 5, Note 2, page 23, add the following:—Creditors should bear in mind that only those who *have proved their claims* can legally vote at the meeting for the appointment of an Assignee.

Sec. 10, page 32, Note No. 2, add to report of case In *re* Andrew Macfarlane & Co. & Stewart:—12 L. C. Jur. page 239.

After Note 1, to Sec. 58, page 88, add:—See Sec. 135 *post*, as to the prior privilege for costs.

THE INSOLVENT ACT

OF 1869.

32 & 33 VIC. CAP XVI.

AN ACT RESPECTING INSOLVENCY.

Preamble.

WHEREAS it is expedient that the Acts respecting Bankruptcy and Insolvency in the several Provinces of Ontario, Quebec, New Brunswick, and Nova Scotia, be amended and consolidated, and the Law on those subjects assimilated in the several Provinces of the Dominion: Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Application of Act.

1. This Act shall apply to Traders only.

1.—TO TRADERS ONLY.

By the law of England a Trader is defined to be a person "seeking to gain his living by buying or selling,"—21 James I, c. 19, s. 2. There must be buying and selling, or, at least, an intent to sell. Buying alone, without an intent to sell, or selling alone, without a buying, will not constitute a trader, in a legal sense. I. Com. Dig, vo. Bankrupt, A. The buying must be a purchase in the common and ordinary, and not merely in the legal acceptation of the term. Per Lord Loughborough, Parker

v. Wells, Cooke, 58. If a man buy horses to sell again with a view to profit, he is a trader; but if he only sells such as he bred and reared himself, he is not. Ex parte Gibbs, II. Rose, 38; Wright v. Bird, I. Price, 20. So if a fisherman purchase fish and sell them, he is a trader; but if he sells only such as have been caught by him, he is not. Heaney v. Birch, III. Cowp. 233. If a man make bricks for sale from his own land, and purchases sand and fuel, &c., for the purpose of making them, he is not a trader. Wells v. Parker, *ubi sup.* When a man purchases timber to sell again, with a view to profit, he is a trader, but if he only sells such as he may cut on his own land, it would be otherwise. Holyrood v. Gwynne, II. Taunt, 178. It is also necessary to make a person bankrupt as a trader, by buying and selling, that there should have been a repeated practice of it; a single act of buying or selling, unaccompanied by an intention to continue it, is not sufficient. Cooke 64; Exparte Bowes 4, Ves. 168; Hankey v. Jones, Cowp. 748. A buying and selling quite collateral to a man's ordinary business, though it may produce a profit, will not constitute him a trader. For example, a schoolmaster who buys books, and sells them to his scholars. Newton v. Trigge, I. Salk, 109. But for the general purposes of law, the word "Trader" has a wider signification than is attributed to it in the bankrupt laws of England. Thus, it may not be too far to say, that every man who does an act upon which any of the rules of mercantile law operates, becomes *quoad* that act, a trader. Smith, Mer. Law, chap. i. 37.

In the Province of Quebec (Lower Canada), there is a wider signification given to the meaning of the word, as regards its application to the Insolvent Law. The word "trader" is there held to embrace:—

1. Auctioneers. Pozer v. Clapham, Stuart, 122.
2. Brokers, Exchange, and Bill-Brokers. Insolvent Act, sec. 143; Ord. 1673.
3. Common Carriers. H. M. Secretary of State v. Edmondstone & al., VI. L. C. Jurist, 322: Rivers v. Duncan, Robertson's Dig. 226.
4. Contractors, builders, &c. McGrath v. Lloyd, 1 L. C. Jurist, 17; Kennedy v. Smith, 6 L. C. Rep., 260; Fahey & al. v. Jackson, in appeal, 7 L. C. Rep. 27; Mackay v. Rutherford, Ramsay's Index, p. 113.
5. Factors and Commission Merchants. Brehaut & al. v. Meran, Robertson's Dig. 156.
6. Hotel, tavern, eating house, and boarding house keepers. Patterson v. Walsh, Robertson's Dig. 49; McRoberts v. Scott, *ubi sup.*

7. Insurers and underwriters. McGillivray v. Montreal Ins. Co., 8 L. C. Rep. 401.
8. Manufacturers of goods for sale. Ord. 1673.
9. Mechanics and tradesmen, who buy merchandize either in the form of raw material, or wholly or partially manufactured, with intent to sell, after having incorporated their labour in the articles so purchased, or changing their character; such as butchers, builders, boot and shoe makers, hatters and furriers, millers, merchant tailors, printers, shipbuilders, watch and clock makers.

Certain authors have questioned the right of classing such mechanics and tradesmen as traders, who only buy materials and bestow labour on them, according to the orders received from a customer. But a larger number of authorities maintain that the only distinction sustainable between mechanics and tradesmen who are, and who are not, in a legal sense, traders, is between those who buy materials, and those who simply work at their trade. Jousse ord. de 1673; 5 Nouv. Denisart, 449; 1 Masse, 20; 2 Carre, 542; Villeneuve et Masse Dict. des Cont. Com. vo. Commerçant § 2.

By Sec. 143, this act is applied also to "unincorporated trading "companies, and copartnerships, and the chief office or place of "business of such unincorporated trading companies and copart- "nerships, shall be their domicile or place of business, as the "case may be, for the purposes of this act."

OF VOLUNTARY ASSIGNMENTS.

Assignment to be made to Interim Assignee. Meeting of Creditors to be called.

2. Any debtor unable to meet his engagements, and desirous of making an assignment of his estate, and any debtor who is required to make an assignment, as hereinafter provided, shall make an assignment of his estate and effects to any official assignee resident within the county or place wherein the Insolvent has his domicile; or if there be no official assignee therein, then to an official assignee in the county or place nearest to the domicile of the Insolvent, wherein an official assignee has been appointed, and the official assignee to whom such assignment is made shall be known

as the Interim Assignee; And forthwith upon the execution of the deed of assignment to him, a meeting of the creditors of the Insolvent for the appointment of an assignee, shall be called by the interim assignee to be held at the place of business of the Insolvent within a period not exceeding three weeks from the execution of the deed of assignment.

1.—WHO MAY ASSIGN?

The section says "any debtor." The words are "any person" in the second sec. of the Act of 1864, of which, with this exception, the present section is a copy. In Ontario the question has arisen whether or not these words entitle foreigners, having property in that province, to the benefit of the Act. But the Court refused to decide it, unless brought before them in another form than in that case. Melton v. Nicholls, 27 Q. B. R. 167.

The same words are to be found in a similar section of the English and American bankrupt laws; and in both countries aliens are permitted to avail themselves of the privileges of these laws. And this, whether the debts have been contracted in these or in other countries. Alexander v. Vaughan, Cowp. 398; Allen v. Cannon, 4 Barn & Ald. 418; Taylor v. Carpenter, 3 Story, 458. James on Bank. Laws, U. S., 28. That is to say, aliens, buying goods in England and sending them abroad for sale; or buying goods abroad and sending them to England for sale, may, on coming to that country, *and there committing an act of bankruptcy*, be made bankrupts there. Arch. Bank. 45. Therefore a foreigner who contracts a debt in a foreign country and comes to Canada, cannot avail himself of the benefit of this act, for such debt alone. It would be necessary that he should have traded and become insolvent here. Hitchcox v. Sedgwick 2 Vern. 162.

2.—AN ASSIGNMENT OF HIS ESTATE.

These words are copied from § 2 of Insolvent Act of 1864. The question has arisen in the Courts of Ontario, whether an Insolvent, who has *no* estate, can partake of the benefit of the act. It arose incidentally in Smith, Insolvent, upon an appeal against his discharge, by Darling a creditor. Adam Wilson, J., held there was an estate, but remarked,—"What conclusion he might have formed as to the validity of an assignment where there was no estate he was not prepared to say." 4 Prac. Ct. Rep. 89. In *re* W. Perry, an insolvent, S. J. Jones, J., held that a discharge may be obtained where the Insolvent has made an affidavit that he has no estate to assign. L. Jur. 1866, p. 75.

In the Courts of Quebec, the books do not show that this point

has been raised. But we are aware that Insolvents who had no estate to assign, have obtained a discharge from the Courts, under the act of 1864, in cases where a deed of discharge had, and also where it had not been given, by the creditors.

As to the necessity of making an assignment prior to application for a discharge, reference is directed to note on § 94 *post.*

3.—WHO IS REQUIRED TO MAKE AN ASSIGNMENT.

That is, by any one or more of his claimants, for sums exceeding in the aggregate $500.—Vide § 14.

4.—SHALL MAKE AN ASSIGNMENT.

The form of the assignment must be according to Form C, § 7.

Calling of meeting and proceedings thereat. Schedule of liabilities and assets; and what it must show. Insolvent to assist, and make a declaration on oath.

3. Such meeting shall be called by advertisement (Form A), and previous to such meeting the interim assignee shall prepare, and shall then exhibit, statements showing the position of the affairs of the Insolvent; And particularly a schedule (Form B), containing the names and residence of all his creditors, and the amount due to each, distinguishing between those amounts which are then actually overdue, or for which he is directly liable, and those for which he is only liable indirectly as indorser, surety, or otherwise, and which have not become due at the date of such meeting, the particulars of any negotiable paper bearing his name, the holders of which the interim assignee shall be unable to ascertain, the amount due to each creditor, and also any contingent liabilities, describing the same; and a statement showing the amount and nature of all the assets of the Insolvent, including an inventory of his estate and effects; And the Insolvent shall assist in the preparation of such statements and of the said schedule, and shall attend at such meeting for the purpose of being examined on oath touching

the contents thereof, and touching his books of account and his estate and effects generally; And at such meeting he shall file a declaration under oath stating whether or no such statements and schedule are correct, and if incorrect, in what particulars; And the interim assignee shall also produce at such meeting, the Insolvent's books of account, and all other documents and vouchers, if required so to do by any creditor.

1.—BY ADVERTISEMENT.

The mode of advertising is regulated by § 117. The "official Gazette," mentioned in § 117, is the official Gazette of the Province in which the Insolvent resides. Vide § 143.

2.—DISTINGUISHING THOSE AMOUNTS WHICH ARE THEN ACTUALLY OVERDUE, OR FOR WHICH HE IS DIRECTLY LIABLE, AND THOSE FOR WHICH HE IS ONLY LIABLE INDIRECTLY.

The object of this distinction is to ascertain who has a right to vote at the preliminary meeting of the creditors. At that meeting, those holding direct claims, or indirect claims maturing before the meeting, have alone a vote. Vide § 4 *post*.

Notice to each Creditor: what to contain.

4. At least ten days before the day fixed for such meeting the interim assignee shall mail to each of the creditors of the Insolvent, in so far as he shall then have been able to discover them, a notice of such meeting with a list containing the names of all creditors holding direct claims, and also of all creditors holding indirect claims maturing before the meeting, amounting to one hundred dollars each, with the amount appearing to be due to each of them; and the aggregate amount of those under one hundred dollars.

1.—AT LEAST TEN DAYS, &C., THE ASSIGNEE SHALL MAIL NOTICE OF MEETING, &C., WITH A LIST CONTAINING NAMES OF ALL CREDITORS, &C.

The form of this notice and list will be found in Appendix, Forms A & B.

2.—LIST OF CREDITORS HOLDING DIRECT CLAIMS, AND ALSO CREDITORS HOLDING INDIRECT CLAIMS MATURING BEFORE THE MEETING.

It is presumed, from the fact that the notice to be given by the Interim Assignee, is limited to the creditors of direct claims, and of claims maturing before the meeting; that the holders of immature claims have no right to vote at the meeting provided for by this and the following section of the Act. Thus the holder of a Bill of Exchange, not yet due, and drawn or indorsed by the Insolvent, would have no such right. Such was the rule under the Act of 1864, in virtue of sub-section 3 of section 2 which is as follows:

"At such meeting, the creditors may name an assignee to whom "such an assignment may be made, and if a vote be taken upon "such nomination, each creditor shall only represent in such "vote the amount of direct liabilities of the Insolvent due to "him, and the amount of indirect liabilities then overdue; and "thereafter the insolvent shall make an assignment of his estate "and effects to the assignee so chosen."

Appointment of Assignee.

Irregularity not to vitiate it.

5. At such meeting, the creditors who have proved their claims in the manner hereinafter provided by the one hundred and twenty-second section, may appoint an assignee to the estate of the Insolvent; and no neglect or irregularity in any of the proceedings antecedent to the appointment of an assignee shall vitiate such appointment, whether it be made under a voluntary assignment, or in compulsory liquidation.

1.—AT SUCH MEETING.

A chairman and secretary should be appointed, and correct minutes, containing a list of the creditors present, or represented, should be made at the time, and preserved, in order that proof of the proceedings may be available, if required, at any future time. Murdoch on Bank, 289; Kinnear on Bank, 274.

2.—MAY APPOINT AN ASSIGNEE.

There is no restriction as to the person who may be nominated. He may be a creditor, or not; or an official assignee, or not; or a resident of the Province in which the Insolvent resides, or not.

A difference of opinion existed between the Courts of Ontario and the Court of Appeals of Quebec, as to whether—under 29th Vic., c. 18, § 2, commonly called the Amendment to the Insolvent Act of 1864—an insolvent had a right to assign to an official assignee not resident in the county or district of the insolvent's domicile. The former held the negative (Hingston v. Campbell, Law Jour. 1866, p. 299), and the latter decided in the affirmative (Brown v. Douglas, 13 L. C. Jur. 29). This question cannot arise under the present act, as it expressly defines in sect. 2 the domiciliary qualification of the Interim Assignee; and in the section, under review makes no restriction as to the qualification, or residence, of the Assignee who may be appointed by the Creditors at the preliminary meeting.

In case no Assignee is appointed, Interim Assignee to act, etc., otherwise to deliver estate to Assignee.

6. If no assignee be appointed at such meeting, or at any adjournment thereof; or if the assignee named refuses to act; or if no creditor attends at such meeting, the Interim Assignee shall be the assignee to the estate of the Insolvent; but if any assignee be appointed thereat, he shall henceforth be the assignee of such estate, and the Interim Assignee shall immediately deliver over to him the whole of the estate of the Insolvent, and all statements.

SHALL IMMEDIATELY DELIVER.

That is, within twenty-four hours from the appointment of the Assignee, as provided in § 8.

Form of Instrument of Assignment, and of Deed of Transfer by Interim Assignee.

7. The deed or instrument of assignment may be in the form C, and the deed of transfer by the Interim Assignee in the form D, or in any other forms equivalent thereto respectively, and if executed in any part of Canada other than the Province of Quebec, they shall be in duplicate, and a copy of the list of creditors produced at the first meeting of creditors, shall be appended to the deed; and no particular de-

scription or detail of the property or effects assigned need be inserted in either of such deeds; and any number of counterparts of such deeds required by the assignee, and any further or other deeds or assurances required by the assignee, shall be executed by the Insolvent, or by the Interim Assignee, as the case may be, at the request of the Assignee, either at the time of the execution of such deed or instrument, or afterwards, to which counterparts no list of creditors need be appended.

1.—THE DEED OR INSTRUMENT OF ASSIGNMENT, &C., AND THE DEED OF TRANSFER, &C., IF EXECUTED IN ANY PART OF CANADA, OTHER THAN THE PROVINCE OF QUEBEC, THEY SHALL BE IN DUPLICATE.

It is enacted that these instruments, when executed in any of the Provinces, except that of Quebec, must be in duplicate. Exception is made of Quebec, because there they are invariably executed before a notary; and *copies* by such officers of all documents passed before them, constitute, in the Courts there *primâ facie* proof of the execution and contents of the originals.

By § 115 of this Act, it is enacted that deeds of assignment, of transfer, of composition, and reconveyance, when executed in the form usually prevailing in the place where executed, shall have the same force and effect elsewhere; and notarial copies of such documents, executed before a notary of the Province of Quebec, shall constitute in all courts of the Dominion, *primâ facie* proof of the execution and contents of the originals.

2.—AND A COPY OF THE LIST OF CREDITORS, &C.

It is important that this requirement should be carefully observed. Because the discharge, which may be obtained by the Insolvent, will apply to such claims only as are mentioned in this list, and in any supplementary list he may furnish previous to his discharge. Vide sec. 98. King v. Smith, C. P. (Ontario) 319.

If Interim Assignee fail to execute Deed of Transfer.

8. If the Interim Assignee shall fail or neglect to execute such deed of transfer within twenty-four hours after the nomination of an assignee at such meeting, he shall in the discretion of the Judge be subject to imprisonment for a

period not exceeding one month; and such imprisonment may be ordered by the Judge upon the application of the person so nominated as assignee, or of any creditor, supported by affidavit to the satisfaction of the Judge: and the interim assignee shall not be permitted to plead to or answer such application either as to its form or upon the merits in any manner or way whatever until after he shall have executed and delivered to the assignee such deed of transfer, and shall have also delivered over to him the whole of the estate and effects of the Insolvent, with all books, instruments, vouchers and documents appertaining thereto.

1.—UPON THE APPLICATION.

This application must be made in the form of a Petition, and should be made through a Member of the Bar. From the fact that it must be supported by an affidavit, to the satisfaction of a Judge, and that the Interim Assignee is debarred from pleading to it in any way, until after he shall have made the transfer, it may be questioned whether notice is required to be given him. It would, however, be prudent to give notice.

Proceedings when Interim Assignee becomes the Assignee. Deposit of the instrument: copies how certified.

9. If by election, or by failure of election, the Interim Assignee shall become Assignee, his appointment shall be established, if by election, by an instrument (Form D D) declaring the fact, signed by the chairman and by one or more of the creditors present at the meeting appointing him, and authenticated by his own affidavit: and if by failure of election, by an instrument declaring the fact, and signed and sworn to by himself before the Judge, who shall have power to interrogate him specially upon the contents thereof, and shall not receive his oath if he has any reason to doubt the facts stated in such instrument; and the instrument of appointment shall be deposited in the office of the Court with

the deed of assignment; and a copy of such instrument certified by the Clerk or Prothonotary of the Court wherein it is deposited under the seal of such Court, shall serve all the purposes of the deed of transfer hereinbefore provided for, and for that purpose shall be annexed to the deed of assignment or in the Province of Quebec to the copy thereof and registered therewith.

What the assignment shall be held to convey.

Proviso: as to pledgees of the property of the Insolvent.

10. The assignment shall be held to convey and vest in the Interim Assignee in the first instance, the books of account of the Insolvent, all vouchers, accounts, letters, and other papers and documents relating to his business, all moneys and negotiable papers, stocks, bonds, and other securities, as well as all the real estate of the Insolvent, and all his interest therein, whether in fee or otherwise, and also all his personal estate, and moveable and immoveable property, debts, assets and effects, which he has or may become entitled to at any time before his discharge is effected under this Act, excepting only such as are exempt from seizure and sale under execution, by virtue of the several statutes in such case made and provided; and if an assignee be subsequently appointed, or if by the failure of election, the Interim Assignee becomes assignee, such assignee shall have the same rights in and to the whole of such estate and effects as were previously held under this Act by the Interim Assignee: Provided always that no pledgee of any of the effects of the Insolvent or any other party in possession thereof with a lien thereon, shall be deprived of the possession thereof, without payment of the amount legally chargeable as a preferential claim upon such effects; except in the case hereinafter provided for of such pledgee or party in possession

proving his claim against the estate and putting a value upon his security; But at any time before the maturity of any advance made upon the pledge of effects of the Insolvent, or within fifteen days thereafter, the assignee shall have the right to sell such effects as he may sell the other effects of the Insolvent; and thereupon if the price is sufficient to cover such advance with interest and lawful charges, the pledgee shall carry out such sale and deliver the effects sold in conformity therewith, receiving the price thereof, but not otherwise.

1.—THE ASSIGNMENT SHALL BE HELD TO CONVEY, &C.

This preceding part of the sec. is copied from sec. 2 sub. sec. 7, of Insolvent Act of 1864. Under that sub. sec. it has been decided by Monk, J., in Montreal, that the moneys which had been seized, by a judgment Creditor of the Insolvent, prior to the assignment, but at the time of the assignment pending in Court, could be attached by the assignee, to be divided among the creditors generally, according to the provisions of the Act, which in this respect are identical with the present one. Bacon v. Douglas, and Converse Ass. 15 L. C. Rep. 456.

But when a sale has been had under an execution against a judgment debtor, who afterwards made an assignment, the proceeds of the sale are not vested in the assignee, but go to the creditor. See Brand v. Bickell, Upper Canada Law Jour. p. 95. Nor will the assignment vest in the Assignee property beyond the reach of the Insolvent law. For instance,—an insolvent absconded from Ontario to the United States. He was there followed by the agent of the person, in that Province, who had become his surety, and by threats of criminal proceedings induced to pay the amount of security. A bill by the official assignee to recover the money from the surety, was dismissed, on the ground that the money handed to the defendant was not within reach of our laws, it would not have formed part of the Insolvent's estate for distribution. Roe v. Smith, 15 Chy. Rep. 344.

The assignment suspends law suits pending by or against the Insolvent. After the assignment the Assignee may move in any suit, for the suspension of the proceedings, until after he can formally appear therein, to prosecute or defend it, in his official capacity. In appeal, Burland v. Larocque, 12 L. C. Jur. 292.

Although, in England, all the property acquired by the Bankrupt up to the time of his discharge passes to his assignee, he may there maintain a suit for his personal labour performed after

the issuing of an assignment. Silk v. Osborne, 1 Esp. 140; Williams & Chambers, 11 Jur. 798; and he may sue upon after-acquired property, or on a contract, unless the assignee interferes. Webb v. Fox, 7 T. R. 391; Fowler v. Down, 1 B. & P. 44; Evans v. Brown, 1 Esp. 170.

By sec. 42 of this Act, the Insolvent, if he shall sue out "any writ," before he obtains a discharge, must give to the opposite party security for costs.

In English Courts it is also held that where the assignees and creditors of a bankrupt, who has not obtained his discharge, allow him to trade and contract debts without their interference, the creditors of such debts will be preferred to the creditors under the bankruptcy on the assets acquired subsequently. Such allowance falling "within the prineiple of a man having a lien "standing by, and allowing another to take a new security "whereby he is postponed." Troughton v. Gitley Amb. 630; Tucker v. Hernaman, 17 Jur. 723; Edgar's Notes on Insolvent Law, 30.

Sec. 12 of Insolvent Act, 1864, gave the unpaid vendor the right of re-taking goods within fifteen days after sale, to a trader in the Province of Quebec who had become insolvent. This was a restriction in some cases of the privilege which previously existed under the common law of that Province, under Arts. 176 and 177, of *Coutume de Paris*. This sec. of the Act 1864 is omitted in the present law; and from the terms of the section under review, and the general tenor of the statute, it may be inferred that the vendor has henceforth no right to regain goods sold to a trader, who becomes insolvent, from the moment they enter the legal possession of the latter.

But the right of stoppage *in transitu* still exists. This right, however, ceases from the moment the purchaser or his agent become possessed of the property.

It has been held, in Hawkesworth v. Elliott & al., and Brown assignee, by a majority of the Judges in appeal (three against two), in Montreal, that the delivery of goods purchased in Great Britain, by the insolvents, merchants in Montreal, to the agent of the latter in Liverpool, deprived the vendor of this privilege. On 9th Feb. 1866, the plaintiff, at Sheffield, England, sold defendant a cask of cutlery. The goods were delivered to the vendee's shipping agent at Liverpool, and forwarded by him to the defendant at Montreal.

On their arrival they were bonded by the purchaser's custom-house broker, and more than fifteen days after, they were, by the plaintiff seized, as the unpaid vendors, under the 12 sec. of Insolvent Act of 1864, as the former had become insolvent.

The assignee of insolvents pleaded that the delivery to their agent at Liverpool was a delivery to themselves, and as fifteen days had elapsed from delivery to the seizure, the plaintiff's right to regain possession had ceased.

In the Superior Court, Berthelot, J., held that the delivery contemplated by that sec. of the Act was an actual possession in the warehouse of the vendees. A similar decision was rendered in Bank of Toronto v. Hingston, Ins., & Allen et al. petrs. 12 L. C. Jur. 216.

In appeal in Sept. term, 1869, this judgment in Hawkesworth v. Elliott was reversed, as already stated. The case is of sufficient interest even as regards the present statute, to reproduce the substance of the remarks of three of the presiding Judges, *pro* and *con*:—

BADGLEY, J.—In this case there had been no such delivery as that contemplated by the Insolvent Act, and capable of destroying the unpaid vendors' right of revendication. When the goods arrived in Montreal, the defendants knew themselves to be hopelessly insolvent, and, as Elliott himself said, being anxious not to do anything which might injure the plaintiffs' right to the goods, he put them in bond in the Customs warehouse. No duties were paid upon them. The goods never went into defendants' warehouse. As to the pretension that the goods were delivered within the meoning of the Insolvent Act to the defendants' agent at Liverpool, it would be absurd. It would totally destroy the right of revendication, as more than that time would elapse before they could reach the country at all. The goods were *in transitu*, not only until they reached their final destination in Montreal but until they were actually received by the defendants with the intention of possessing and appropriating them as their own property. In this case no such delivery ever took place, because by Elliott's express declaration it was evident that he put the goods in the Customs warehouse to protect the rights of the plaintiffs as unpaid vendors. The present sale was a sale without term, as a sale is presumed to be for cash unless otherwise expressed. In such sales ordinarily the unpaid vendor has a right to revendicate his goods so long as they have not been mixed up with the other goods of the vendee, in other words so long as he can identify them; but in cases of insolvency our law has limited the time within which such demand in revendication can be made to fifteen days after the delivery of the goods to the purchaser.

He adduced numerous authorities from the English, Scotch, and French law, to show that in the present case there had never been any delivery to the defendants of a nature to bar the plaintiffs' right of revendication. He cited cases in which goods were actually received into the warehouse of the purchaser, but with a declaration that they were so received in the interest of the vendor, and it was held by the Court that no effective delivery of the goods had been made to the purchaser. He thought that the judgment maintaining the plaintiffs' action and dismissing the intervention of the assignee should be confirmed, but it

should be upon the ground that delivery ef the goods in question not having been received by the defendants, they remained at the plaintiffs' disposal as their property, and that the Insolvent Act did not apply and could not interfere with the exercise of the plaintiffs' right over their goods.

MONK, J., expressed his opinion that there never had been any sufficient delivery of the goods in question to bring them under the operation of the Insolvent Act, and he would maintain the judgment of the Court below.

DUVAL, J. (who gave the opinion of the majority of the Court), said, the goods in question were effectually delivered to the defendants through their agent at Liverpool. They were at the defendants' risk on the passage. They insured them and paid the premium. They paid the freight and all other charges. They were entered in their name in their Custom warehouse, and although the duty was not paid it was the custom of merchants to leave goods in bond at the Customs warehouses until they required them for their business. The cases cited by his learned brother referred to a time when there were no such bonded warehouses. Elliott & Co. had delivery of the goods in the same way in which merchants are accustomed to get delivery, and their saying quietly to one of their clerks in a back room that thep put the goods in the Customs warehouse, being anxious that no act of thiers should prejudice the plaintiffs' right of revendication, should not operate to the disadvantage of the creditors generally.

The following decision under the Act of 1864, will supply an opposite illustration; namely,—when goods sold and shipped were held not to be in the possession of the vendor, and therefore liable to a stoppage *in transitu*.

In Whyte ass. to Fraser v. Davis, and Moritz, intervening, the latter, a merchant in Antwerp, sold in June, 1868, to Fraser the Insolvent, of Montreal, 10 cases of glass. The goods were shipped by vendor to the latter. On their arrival at the port of Montreal, Fraser, who had in the meantime become insolvent and assigned, notified Moritz of the change of his condition, and conceiving he had no right therefere to take delivery, instructed defendant Davis to do so, as the agent of the Moritz, and indorsed the bill of lading to him for that purpose.

The assignee of Fraser's estate seized the glass, as having been in the legal possession of Insolvent, and therefore the property of the creditors generally.

In Superior Court, Montreal, Mondelet, J., decided that under these circumstances the vendor had not lost his privilege of stoppage *in transitu*, because the goods had not come into the actual possession of the vendee or his agents.

From these decisions it would appear that the delivery of the bill of lading to the purchaser does not deprive the vendor of his

privilege, but otherwise if the goods have been delivered to the agent of the latter. And it may be assumed that the present law will recognise this distinction, and sustain the doctrine of the English Courts on this question. By the present law of France the vendor can retake (revendicate) goods *after* they enter the possession of the purchaser, provided the possession be not of a nature to augment the credit of the purchaser in the eyes of others; but otherwise, if the actual possession of them may have thus increased the credit of the purchaser, although the goods be *not* in the purchaser's warehouse. Bedarride says: "Ainsi, un magasin public dans lequel des marchandize sont entrées comme propriété de l'acheteur, *pour y restait a sa disposition*, doit être considere comme celui de l'acheteur lui même, malgre qu'il soit situé, dans une autre ville qui celle où reside celui-ci." 3 Bedarride, Des Faillites, § 1145, p. 199. These rules appear to go a little beyond those laid down in the case of Hawkesworth v. Elliott, & Brown, and also beyond those held in the English courts. See Smith Mer. Law, B 4, sec. 3. Benjamin, Sales chap. V.

The assignment, under the act, does not however vest in the assignee, property held by the Insolvent as a trustee or seller on commission. Vide sec. 10.

2.—AND ALSO ALL HIS PERSONAL ESTATE.

Thus if A and B, as copartners, fail and assign, the assignment attaches to their individual, as well as to their copartnership property. Andrew Macfarlane & Co. failed and assigned as such co-partners to A. B. Stewart. Subsequently they made another assignment of their individual estates to the same assignee. The creditors of the firm caused Mr. James Court to be appointed assignee in the stead of Stewart. The latter thereupon transferred the copartnership estate to Mr. Court. On petition Court claimed that the separate estates of the partners should also be vested in him, on the ground that the first assignment legally embraced both the separate and copartnership property. The application was resisted by Stewart, but the Bench (Torrance, J.) granted it; and cited the first ten lines of this sec. which forms sub.-sec. 7 of sec. 2, of Act of 1864; and also referred to Lindley Part. 929, 930 *cum notis;* Gow Part. 267; Story Part. § 376 n. 1; Henley on Bankruptcy, cap. 4, § 4.

3.—EXCEPTING ONLY SUCH AS ARE EXEMPT FROM SEIZURE.

In Ontario, by 23 Vic. c. 25, the following articles are exempted from seizure under any writ:

1. The bed, bedding, and bedsteads in ordinary use by the debtor and his family;

2. The necessary and ordinary wearing apparel of the debtor and his family;

3. One stove and pipes, and one crane and its appendages, and one pair of andirons, one set cooking utensils, one pair of tongs and shovel, one table, six chairs, six knives, six forks, six plates, six teacups, six saucers, one sugar basin, one milk jug, one teapot, six spoons, all spinning wheels and weaving looms in domestic use, and ten vols. of books, one axe, one saw, one gun, six traps, and such fishing tackle and seines as are in common use;

4. All necessary fuel, meat, fish, flour and vegetables actually provided for family use, not more than sufficient for the ordinary consumption of the debtor and his family for thirty days, and not exceeding in value the sum of forty dollars;

5. One cow, four sheep, two hogs, and food therefor for thirty days;

6. Tools or implements of, or chattels ordinarily used in the debtors occupation to the value of sixty dollars.

In the Province of Quebec—Code Civ. Pro. art. 556—the following is the list of exemptions:

1. The bed, bedding, and bedsteads in ordinary use by the debtor and his family;

2. The necessary and ordinary wearing apparel of the debtor and his family;

3. One stove and pipes, and one crane and its appendages, one pair of andirons, one set of cooking utensils, one pair of tongs and shovel, one table, six chairs, six knives, six forks, six plates, six teacups, six saucers, one sugar basin, one milk jug, one teapot, six spoons, all spinning wheels and weaving looms in domestic use, and ten vols. of books, one axe, one saw, one gun, six traps, and such fishing nets and seines as are in common use;

4. Fuel and food, not more than sufficient for thirty days, and not exceeding in value the sum of twenty dollars;

5. One cow, four sheep, two hogs, and food therefor for thirty days;

6. Tools and implements or other chattels ordinarily used in the debtors' occupation to the value of thirty dollars;

7. Bees, to the extent of fifteen hives.

In New Brunswick and Prince Edwards Island, wearing apparel and kitchen utensils to the amount of £15; and in Nova Scotia, to the value of $40.00, are thus exempted.

4.—EXCEPT IN THE CASE HEREINAFTER PROVIDED FOR, OF SUCH PLEDGEE OR PARTY IN POSSESSION PROVING HIS CLAIM AGAINST THE ESTATE.

See secs. 60, 61, & 62 *post*.

Deposit of duplicate of Deed of Assignment.

11. Forthwith upon the execution of the deed of transfer, the Assignee, if appointed in any part of Canada other than the Province of Quebec, shall deposit one of the duplicates of the deed of assignment and of such deed of transfer, and if in the Province of Quebec, authentic copies of each, in the office of the proper Court; and in either case the list of creditors shall accompany the instruments so deposited.

1.—IN THE OFFICE OF THE PROPER COURT.

That is, in the Province of Quebec, at the Prothonotary's office of the Superior Court, having jurisdiction in the domicile of the insolvent; in the Province of Ontario and New Brunswick, in the County Court; and in the Province of Nova Scotia, at the Supreme Court of Nova Scotia. Vide § 142.

Registration of Deeds of Assignment and of Transfer.

12. If the Insolvent possesses real estate, the deed of assignment with the deed of transfer annexed thereto, if any such deed of transfer be required and executed, or, if such real estate be in the Province of Quebec, authentic copies thereof may be enregistered in the Registry Office for the Registration Division or County within which such real estate is situate; and no subsequent registration of any deed or instrument of any kind executed by the Insolvent, or which otherwise would have affected his real estate, shall have any force or effect thereon; and if the real estate be in any part of Canada other than the Province of Quebec, and deeds of assignment and of transfer be executed in the Province of Quebec before Notaries, copies of such deeds certified by the Notary or other public officer in whose custody the originals remain, may be registered without other evidence of the execution thereof, and without any memorial; and a certificate of such registration may be endorsed upon

like copies, and if the property be in the Province of Quebec and the deeds of assignment and transfer be executed elsewhere in the Dominion, they may be enregistered at full length in the usual manner; but it shall not be necessary to enregister, or to refer on registration in any manner to, the list of creditors annexed to the deed of transfer.

1. This section is in substance copied from sub. sec. 9 & 10 of sec. 2 of Act of 1864.

The registration of the deed effects a general transfer and mortgage on all the real estate of the insolvent.

COMPULSORY LIQUIDATION.

When a debtor's estate shall be subject to compulsory liquidation.

13. A debtor shall be deemed insolvent and his estate shall become subject to compulsory liquidation.

1. This section, and its sub-sections to *h* inclusive, are copied from the Act of 1864; part of sub. sec. *r*, as far as the words "prescribed by this act," is also taken from that act; and sub. sec. *g* is taken from sec. 3 of 29 Vic. cap. 18, the amendment to the statute of 1864. They are in substance copied from the English Act and are similar to those in the United States Act of 1867. James, Bankrupt Law of United States, 227.

2.—SHALL BE DEEMED INSOLVENT.

The word "insolvent," as used in this Act, corresponds to the legal meaning of the word bankrupt in England. The technical distinction which formerly existed in that country between bankrupts and insolvents, namely that the former were traders and the latter not, has now, however, ceased to exist there. Neither has the distinction which prevails in France between a trader who becomes insolvent, *faillite*, and one who becomes a bankrupt, *banqueroute*, any further recognition in the Province of Quebec. Abbott on Ins. Law, 1864, 16. It may be therefore safe to follow the interpretation of English courts on the acts laid down in this statute, which render a trader liable to compulsory liquidation, in so far as they may not conflict with the decisions of our courts. In Ontario, a creditor whose debt is immatured, may commence these proceedings against an insolvent debtor, in the same manner as he might have done if his debt had been overdue. In *re* Moore v. Luce, 18 C. P. (Upper Canada) p. 446. Vide 13 L. C. Rep. 113. That he may also, in the Province of Quebec, may be inferred, because there, anterior to the insolvent law, writs of attachment could be taken against the person and property of debtors on immatured claims. Sinclair v. Ferguson and Robertson v. Ferguson, 8 L. C. Rep. 239; Leduc v. Tourigny, 5 L. C. Jurist, 123.

ABSCONDING.

a. If he absconds or is immediately about to abscond from any Province in Canada with intent to defraud any creditor,

or to defeat or delay the remedy of any creditor, or to avoid being arrested or served with legal process; or if being out of any such Province in Canada he so remains with a like intent; or if he conceals himself within the limits of Canada with a like intent;

In the Bankrupt Laws of England and the United States are provisions similar to this and the following sub. sections. See Doria & Macrae, Law of Bank. p. 127; James on Bank. Law, 1867, p. 227 et seq., &c.

1.—IF HE ABSCONDS WITH INTENT.

In England an adjudication in bankruptcy cannot be sustained where the departure was for a fair and proper purpose, and not with a view of defrauding or delaying the creditors. Every man has a right to go abroad to look after his affairs, though his creditors may be thereby delayed. Exparte Mutrie 5 Ves. 574; Warner v. Baker, Holt, 175. A departure with *intent* to delay creditors is an act of bankruptcy, though no creditor is thereby delayed. Cooke's Bank. Law, 4th ed. 74; Aldridge v. Ireland, 7 T. R. 512. On the other hand, where the delay of the creditors is the necessary consequence of the debtor absenting himself, the departure then constitutes an act of bankruptcy. Ramsbottom v. Lewis, 1 Camp., 279. See also Fowler v. Padgett, 7 Term. Rep. 509, where this principle is fully explained and illustrated. See also Rawson v. Haigh, 9 Moore, 217. These cases, it is presumed, would be recognised in the courts of Canada as authorities.

The circumstances which in the Province of Quebec have been hitherto held sufficient to sustain a capias, alleging, absconding, or the intention to abscond, with intent, &c., may be gathered from the following cases, and may help to illustrate this sub. sec.: Lamarche v. Lebrocq, 1 L. C. Rep. 215; Benjamin v. Wilson, ibid, 351; Leeming v. Cochrane, ibid, 352; Wilson v. Ray, 4 L. C. Rep. 157; Larocque v. Clark, ibid, 402; Tremain v. Sansum, 4 L. C. Jur. 48; Larocque v. Clark, Cond. Rep., L. C. Rep. 67; McDougall v. Torrance, 5 L. C. Jur. 148; Ross v. Burns (in appeal) 10 L. C. Jur. 89. In an unreported case of Wurtele v. Strickland, at Quebec, Oct. 1851, Mr. Justice Meredith held, that an affidavit for capais, stating that defendant, resident of Quebec, was leaving for New York, was insufficient, because defendant might be going there *without* a fraudulent object. Grounds of belief that he was leaving with intent to defraud were necessary.

SECRETION.

b. Or if he secretes or is immediately about to secrete any part of his estate and effects with intent to defraud his creditors, or to defeat or delay their demands or any of them;

Held in United States, that the concealment of goods must be actual, not constructive, to constitute an act of bankruptcy. Livermoor v. Bagley, 3 Mass., 487. The act also depends on the intent with which it is done. James on Bank. Law (U. S.), 235. Any act of a debtor by which his true title and ownership of property are kept from the view of his creditors, if made with intent, to prevent it being attached, is a concealment. O'Neil v. Glover, 5 Gray, 144. Avery & Hobbs, Bank. Law, U. S., 328.

So, in the Province of Quebec, by the 798 art. of the *Code of Civil Procedure*, it is required that secretion of the personal property should be established with certainty and not stated as a matter of belief, vide Hurtubise & al v. Leriche, 13 L. C. Jur. 83. And in the Court of Review, Montreal, it was held (Torrance, J. *dissent.*), that there cannot be constructive secretion. The Quebec Bank v. Steers, 13 L. C. Jur., 75. The first of these decisions was rendered on a motion to quash a *capias ad res.*; and the second on a motion to quash an attachment (*saisie arrêt*) before judgment. But it may be presumed, they would be held, in that Province, to interpret this sub section of the act; although they somewhat restrict the interpretation of previous decisions. For former decisions, vide Robertson's Digest, *vi.* CAPIAS—INSOLVENCY.

FRAUDULENT ASSIGNMENT.

c. Or if he assigns, removes or disposes of, or is about or attempts to assign, remove or dispose of, any of his property with intent to defraud, defeat or delay his creditors, or any of them;

An assignment with intent to defraud the creditors, would be looked upon as tantamount to a fraudulent secretion. For decisions of the English courts on this question, vide Doria & Macrae, Law of Bank. 136, *et seq.*; and of the American courts, see Avery & Hobbs, Bank Law, U. S., 329; James, Bank Law of 1867, 236 *et seq.*

It has been held in Ontario, that the mere intention on the part of a debtor to dispose of his property, and the apprehension of his sole creditor that by so doing he would be unable to pay his debt (though his property be of sufficient value to pay his creditor), does not bring him within this *sub. sec.* 5 Prac. Rep. p. 10.

FRAUDULENTLY PROCURING EXECUTION.

d. Or if with such intent he has procured his money, goods, chattels, lands or property to be seized, levied on or taken under or by any process or execution, having operation where the debtor resides or has property, founded upon a demand in its nature proveable under this Act, and for a sum exceeding two hundred dollars, and if such process is in force and not discharged by payment or in any manner provided for by law;

1.—HAS PROCURED HIS MONEY, &C., TO BE SEIZED.

A similar provision is § 67 of English law of 1861. It is held there that 'procuring,' means taking the initiative, and causing the thing to be done in the ordinary sense of the word. There must be, in the act, an intent to delay or defraud the creditors. Where there was an honest and proper motive on the part of the debtor in granting a judgment, no act of bankruptcy is committed. Gore v. Lloyd, 13 L. J. 366 Exch.

For American decisions, see Avery & Hobbs, Bank. Law, U. S. 335; James, Bank. Law, 1867, 260.

IMPRISONED IN CIVIL ACTION.

c. Or if he has been actually imprisoned or upon the gaol limits for more than thirty days in a civil action founded on contract for the sum of two hundred dollars or upwards, and still is so imprisoned or on the limits; or in case of such imprisonment he has escaped out of prison or from custody or from the limits;

1. By the English statute, imprisonment for fourteen days, in such a case, becomes an act of bankruptcy. Act of 1861, § 71, vide Doria & Macrae, 156.

2. By the United States Act, imprisonment for seven days is sufficient. James, Bank. Law, 1867, 260.

3.—MORE THAN THIRTY DAYS.

In England the days are reckoned exclusive of the first, and inclusive of the last, unless the last falls on a Sunday or holiday,

or a day appointed for a public fast or thanksgiving. Formerly, the first and last days were included. Doria & Macrae on Bank. 157.

By § 143 of this Act, the word "day" is said to mean "a juridicial day." In the Province of Quebec, neither the first nor last days would be included. Civil Procedure § 24. Rules practice Ins. Act No 12.

NEGLECTING OR REFUSING TO APPEAR.

f. Or if he wilfully neglects or refuses to appear on any rule or order requiring his appearance, to be examined as to his debts under any statute or law in that behalf;

NEGLECTING OR REFUSING TO COMPLY.

g. Or if he wilfully refuses or neglects to obey or comply with any such rule or order made for payment of his debts or of any part of them;

NEGLECTING OR REFUSING TO OBEY ORDER IN CHANCERY.

h. Or if he wilfully neglects or refuses to obey or comply with the order or decree of the Court of Chancery or of any of the judges thereof, for payment of money;

ASSIGNMENT OTHER THAN BY THIS ACT.

i. Or if he has made any general conveyance or assignment of his property for the benefit of his creditors, otherwise than in the manner prescribed by this Act, or if being unable to meet his liabilities in full, he makes any sale or conveyance of the whole or the main part of his stock in trade or of his assets, without the consent of his creditors, or without satisfying their claims;

1.—OR IF BEING UNABLE TO MEET HIS LIABILITIES IN FULL, HE MAKES ANY SALE, &C.

The theory of the law of France is, that when a trader becomes unable to pay his liabilities, his property belongs to his creditors. Jousse, ord. of 1673, 150; Code de Com. art. 437. The sale or conveyance of the main part of his stock after he discovers his insolvency, would necessarily result in defeating and delaying

his creditors, and therefore constitutes an act of bankruptcy, as laid down in sub. sec. *C. ante.* In such a case, a creditor could place the estate in compulsory liquidation. Thomas v. Torrance and Thom v. Torrance, 17 C. P. Rep. (Ontario), 445.

But creditors who may have signed, or even verbally assented to or advised an assignment, other than by the bankrupt laws, cannot afterwards attack it, as an act of bankruptcy. Nor can the assignees, who acted in the administration of the estate under such assignment. Doria & Macrae, 152.

PERMITS AN EXECUTION ON HIS PROPERTY.

j. Or if he permits any execution issued against him under which any of his chattels, land or property are seized, levied upon or taken in execution, to remain unsatisfied till within four days of the time fixed by the Sheriff or officer for the sale thereof, or for fifteen days after such seizure; subject however to the privileged claim of the seizing creditor for the costs of such execution, and also to his claim for the costs of the judgment under which such execution has issued, which shall constitute a lien upon the effects seized, or shall not do so, according to the law as it existed previous to the passing of this Act, in the Province in which the execution shall issue.

1. This sub. section is taken from sec. 3 of Prov. Act, 29 Vic. cap. 18, the amendment to the Insolvent Act of 1864.

2. The object of this sub. section is to prevent, as far as possible, one creditor obtaining a preference over another, on the assets of the debtor.

If a debtor fails to meet his liabilities.

14. If a debtor ceases to meet his liabilities generally as they become due, any one or more claimants upon him for sums exceeding in the aggregate five hundred dollars, may make a demand upon him either personally within the county or judicial district wherein such Insolvent has his chief place of business or at his domicile, upon some grown person of his family, or in his employ; (Form E.) requiring him to

make an assignment of his estate and effects for the benefit of his creditors.

1. Taken from sub. sec. 2 of sec. 3 Insolvent Act of 1864.

2.—IF A DEBTOR.

The debtor must be a trader, as the operation of the law is confined to traders. And in the Province of Ontario it has been held, that one who has ceased to trade before the 1st of September, 1864, when the insolvent act, which preceded the present one, came into operation, could not be proceeded against under sub. sec. 2 of sec. 3, of that Act, from which this section is derived. Bagwell v. Hamilton, 10, U. C. Jour. 305; see also Lacombe & al. v. Lanctot, 16 L. C. Rep. 166, which will be more fully referred to further on, and in which a somewhat similar decision was given, in the Court of Review, at Montreal.

It may therefore be inferred that as the Act of 1864 was inoperative *quoad* traders residing in the Provinces of New Brunswick and Nova Scotia, this section could not be invoked against such of them who have ceased to trade anterior to the 1st of Sept. 1869, when the present law came into force. True, this sub. sec. of the Act of 1864 says, "If a *trader* ceases to meet his *commercial* liabilities, &c., which the sec. 14 of the present act, substitutes with the words "If a *debtor* ceases to meet his *liabilities generally*," &c., and a debtor may not be a trader. But, as the operation of this act is confined to *traders*, it is submitted that the above authorities are applicable.

3.—CEASES TO MEET HIS LIABILITIES.

In the Act of 1864 this sec. is expressly limited to "commercial liabilities." But as the present statute is limited to traders, it may be urged that ceasing to meet liabilities of a non-commercial nature would not alone place a trader under its operation. It would appear the present act extends the element of the former one in this respect; and, provided the debtor be still a trader, permits the demand of an assignment to be made, when he ceases to meet generally his private debts, as well as those contracted in his business, whereby, on the contestation of the demand, the creditor may be enabled to add weight to the presumption of insolvency of the debtor, through non-payment of his trading liabilities, by establishing also the non-payment generally of his private and non-trading debts.

It has been already remarked that the debtor must be a trader, and that no demand can be made on liabilities of a private nature. Nor can the demand be made simply as a means and with the hope of collecting a debt. The following case of Lacombe & al. v. Lanctot petr., may serve for illustration.

Lacombe and another, creditors of Lanctot, demanded from the latter an assignment under "sec. 3, sub. sec. 2 of Insolvent Act of 1864," from which the sec. of the Act under review is derived. The latter, by petition, contested the demand, on the ground that the debt was a private one, that at the time of the demand he was doing business in partnership with another, that the partnership had not ceased to pay its liabilities, and that he had not ceased to meet his "commercial liabilities."

In evidence it also was admitted by one of the creditors that the demand was made simply to enforce the *payment* of the claims of these two creditors.

The Court held that these facts being proved, were sufficient to sustain the petition; and that this sec. did not permit creditors to use it as a medium of simply collecting debts. It was also evident that the demand was made in the belief that the petitioner would pay the claims by the fear of otherwise jeopardising the credit of the firm in which he was a partner. 16 L. C. Jurist, 166.

4.—GENERALLY AS THEY BECOME DUE.

In England mere stoppage of payment will not place the debtor involuntarily under the operation of the bankrupt law. Vide Doria & Macrae, 127. In France, all traders who cease making payment (*cesse paiemens*) become insolvent, and liable to be dealt with accordingly. Code de Commerce, amdts. 1838, art. 437.

In this act a middle course has been adopted. It neither denies a presumption of insolvency by the stoppage of payment nor treats it as conclusive proof. And while it enables creditors in such cases to prepare to put the estate under their control, in the event of insolvency, it also enables the debtor to relieve himself, by showing the stoppage to be temporary, and not produced by fraud or insufficiency of assets. Vide § 15 *post*.

The meaning attachable to the words of the act may be partially gathered by reference to the following French authorities on the words cessation of payments—*cessation de paiemens*—in art. 437, Code de Commerce, 4 Pard. Droit. Com'l. § 1101; 1 Bedarride des Faillites, § 18. The Judge will, in most of such cases, exercise his discretion as to whether the evidence laid before him establish a general stoppage of payment or not; at least until the jurisprudence in this sec. furnishes a larger list of precedents than at present.

5.—ANY ONE OR MORE CLAIMANTS, &C.

By the Act of 1864 one creditor alone could not make the demand. A joint demand, signed by two or more of the creditors, was requisite.

6.—MAY MAKE A DEMAND.

The demand, according to the form D, should be in duplicate, and one of the duplicates should be preserved, with a certificate indorsed thereon by the person who served it on the debtor, of the date and place of service. It may be prudent also to add the hour on which it was served, if served within the usual hours of business. In the Province of Quebec no summons can be served before 7 A. M. nor after 7 P. M.; nor can a document in any law suit, before 9 A. M. or after 6 P. M. from 21st March to 21st Sept.; nor before 9 A. M. nor after 5 P. M. for the remainder of the year.

But if claims do not amount to $500, *etc., Judge may make an order suspending proceedings.*

15. If the debtor, on whom such demand is made, contends that the same was not made in conformity with this Act, or that the claims of such creditor or creditors do not amount to five hundred dollars, or that they were procured in whole or in part for the purpose of enabling such creditor or creditors to take proceedings under this Act, or that the stoppage of payment by such debtor was only temporary, and that it was not caused by any fraud or fraudulent intent, or by the insufficiency of the assets of such debtor to meet his liabilities, he may after notice to such claimant or claimants, but only within five days from such demand, present a petition to the judge praying that no further proceedings under this Act may be taken upon such demand, and after hearing the parties and such evidence as may be adduced before him, the judge may grant the prayer of his petition, and thereafter such demand shall have no force or effect whatever; and such petition may be granted with or without costs against either party; but if it appears to the judge that such demand has been made without reasonable grounds, and merely as a means of enforcing payment under colour of proceeding under this Act, he may condemn the creditors making it, to pay treble costs.

1.—This clause is substantially similar to sub. sec. 3, sec. 3, Act 1864.

2.—OR THAT THE CLAIMS OF SUCH CREDITOR OR CREDITORS DO NOT AMOUNT TO $500.00, &c.

The previous section would imply that the claim should "*exceed*" $500, while this section appears to make $500 alone sufficient.

The insufficiency of the amount of the creditor's claim, or procuring the sufficiency for the purpose of making a demand, are fatal. And in Montreal it has been held that if the deficiency be supplied by a transfer of a debt from a third party, the notice of such a transfer must be given to the debtor anterior to the demand for an assignment. In that city, on the 13th January, the firm of Turgeon & Gratton & Eusèbe Gratton, made a joint demand on Taillon, for an assignment under the Act of 1864. The debtor contested it by petition. In evidence it appeared that the claim of Eusèbe Gratton amounted to $35.00, which, united to that of Turgeon & Gratton, exceeded $500.00. This claim he had transferred to one Durocher, on Octr. 1866; but subsequently Durocher re-transferred it to Gratton, who gave notice of the re-transfer to the debtor on the 22nd July, about seven days subsequent to the demand for an assignment. The Court held (Torrance, J.) that as the claims on which the demand was founded, were insufficient without that for $35.00, and as the re-transfer of the latter to Gratton had not been notified to insolvent till after the demand, the demand could not be sustained. 13 L. C. Jurist, 19.

3.—WITHIN FIVE DAYS.

That is, five juridicial days. See § 143; see also Rules of Practice, appendix.

Non-juridicial days in Ontario are: Sundays, Christmas day, Good Friday, Easter Monday, Ash Wednesday, New Year's day, (Circumcision), the Queen's birth-day, and any day set apart by Royal proclamation for fasting or thanksgiving.

In the Province of Quebec, they comprise, in addition to the foregoing, (and with the exception of Ash Wednesday and Easter Monday) Epiphany, Annunciation, Ascension Day, Corpus Christi, St. Peter and St. Paul, All Saints Day, and Conception. Code Civ. Pro. § 2.

The Court cannot allow the petition to be presented after the five days, and not even when on affidavit it has been alleged that the neglect arose through an error on the part of defendant's attorneys, and that defendant had a good defence. May v. Larue, 10 L. C. Jurist, 113. See also *exparte* Moorehouse, & Burland & Sache, contestants. Court Review, Montreal, 30th June, 1868.

4.—AFTER NOTICE.

One clear juridicial day. See § 125 *post*.

5.—TO THE JUDGE.

In Ontario and New Brunswick to the judge of the County Court for the County in which the demand is made; in Province of Quebec, to a Judge of the Superior Court in the district where demand is made; in Nova Scotia, to a Judge of Probate, except cases in the city of Halifax, where it may be presented before a Judge of the Supreme Court. § 142 *post.*

6.—AFTER HEARING THE PARTIES.

In Quebec it has been held that the creditors who make the demand cannot be examined in support; but the decision on this point was given on the Code of Civil Procedure (Art. 251), which will not, of course, apply to the other Provinces. Turgeon v. Taillon, 13 L. C. Jur. 19. Elsewhere in the Dominion, the rules of evidence to be followed will be those existing where the proceedings are taken. And therefore, in Ontario, it has been held that the creditor, or his agent, who swears to the debt for an attachment, may be a witness testifying to the facts constituting insolvency. 5 Prac. Rep. 10.

7.—THAT THE STOPPAGE, &C., WAS TEMPORARY, AND NOT CAUSED BY FRAUD, &C.

See remarks on sec. 14 *ante.*

It must be added here, that it has been held, in appeal to the Court of Review at Montreal, that the *onus probandi* is on the petitioner to establish that his stoppage is only temporary, and that his assets were sufficient to meet liabilities, &c. McCready v. Leamy, 11 L. C. Jur. 193. In England it is the reverse. Ex-parte Clay, 1 Fonblanque 212.

8.—WITHOUT REASONABLE GROUNDS.

During a season of commercial depression, a trader may be quite solvent, and yet from unavoidable causes, temporarily unable to meet his engagements. In such cases, this act will not be permitted to be used as a vehicle to injure the credit of the debtor, by making a demand on him for an assignment; nor can it be used, as has been already remarked, for the purpose of collecting a claim. See Lacombe v. Lanctot, notes on sec. 14, *ante.* It may be assumed that an action of damages would lie against creditors who make a demand on insufficient grounds, in addition to the treble costs, which the Judge has the authority to award on the petition.

If the debtor be absent when the demand is made.

16. If at the time of such demand the debtor was absent from the Province wherein such service was made, application may be made after due notice to the claimants, within the said period of five days, to the Judge on his behalf, for an enlargement of the time for making an assignment; and thereupon if such debtor have not returned to such Province the Judge may make an order enlarging such period, and fixing the delay within which such assignment shall be made, but such enlargement of time may be refused by the Judge if it be made to appear to his satisfaction that the same would be prejudicial to the interests of the creditors.

1.—This clause is not to be found in the Act of 1864, nor in the amendment Act 29 Vic. cap. 18.

2.—AFTER DUE NOTICE.

One clear day (sec sec. 143), with the additional delay in cases specified in § 125.

In certain cases such debtor's estate to become subject to compulsory liquidation.

17. If such petition be rejected, or if while such petition is pending, the debtor continues his trade, or proceeds with the realization of his assets, or if no such petition be presented within the aforesaid time, and the Insolvent during the same time neglects to make an assignment of his estate and effects for the benefit of his creditors as provided by the second section of this Act, his estate shall become subject to compulsory liquidation.

When act or omission shall not justify the placing of the estate in compulsory liquidation.

18. But no act or omission shall justify any proceeding to place the estate of an Insolvent in compulsory liquidation,

unless proceedings are taken under this Act in respect of the same, within three months next after the act or omission relied upon as subjecting such estate thereto; nor after a writ of attachment in compulsory liquidation has been issued while it remains in force, nor after a voluntary assignment has been made, or an assignee appointed under this Act.

1.—WITHIN THREE MONTHS.

In England, the limit is twelve months, Doria & Macrae, 218; in Scotland, four months, Murdoch, 223; in the United States, six months. James, Bank. Law, 1867, 221.

The plaintiff's claim must be in existence during the occurrence of the act of bankruptcy. Moss v. Smith, 1 Camp. 489; Cowie v. Harris, Moo. & M. 141. The fact that the creditor has since obtained, by transfer a judgment, on a claim existing during the occurrence of the acts complained of, will not be sufficient. Bryant v. Withers, 2 M. & S. 123, Doria & Macrae, 219. If committed on the day even on which the application is made, it is sufficient. *Exparte* Dufresne, 1 Ves. & B. 51.

It is submitted that the statute has not, in this respect, a retroactive effect; and therefore, as regards the Provinces of Nova Scotia and New Brunswick, no act occurring there previous to the 1st Sept. 1869, and which under this law may be acts of bankruptcy, could avail a creditor in proceedings for compulsory liquidation.

2.—AFTER A VOLUNTARY ASSIGNMENT.

Which must be made according to the statute, otherwise it becomes an act of bankruptcy. See, *ante*, § 13, sub. sec. *i*.

Affidavits in Province of Quebec, how made.
Writ of Attachment founded thereon.

19. In the Province of Quebec an affidavit may be made by a claimant for a sum of not less than two hundred dollars, or by the clerk or other duly authorized agent of such claimant, setting forth the particulars of his debt, the insolvency of the person indebted to him, and any fact or facts which under this Act, subject the estate of such debtor to compulsory liquidation.—(Form F)—And upon such affidavit

being filed with the Prothonotary of the district within which the Insolvent has his chief place of business, a writ of attachment (Form G) shall issue against the estate and effects of the Insolvent, addressed to the sheriff of the district in which such writ issues, requiring such sheriff to seize and attach the estate and effects of the Insolvent, and to summon him to appear before the court to answer the premises; and such writ shall be subject as nearly as can be to the rules of procedure of the court in ordinary suits, as to its issue, service, and return, and as to all proceedings subsequent thereto before any Court or Judge.

1.—AN AFFIDAVIT.

It must be sworn before one of the legal officers specified in § 123 *post.*

2.—BY A CLAIMANT.

See remarks on sec. 13. As to the interpretation of the word "creditor," see § 143.

In England the claim, if barred by the statute of limitations, is insufficient, Exparte Dewdney 15 Ves. 479; nor can it be for damages, unless fixed by a judgment, Cameron v. Smith, 2 B & A 305.

Affidavits in other Provinces, how made.
Writ of Attachment.

20. In the Province of Ontario, New Brunswick or Nova Scotia, in case any claimant by affidavit of himself or of any other individual (Form F), shows to the satisfaction of the judge that he is a creditor of the Insolvent for a sum of not less than two hundred dollars, and also shews by the affidavits of two credible persons, such facts and circumstances as satisfy such judge that the debtor is insolvent within the meaning of this Act, and that his estate has become subject to compulsory liquidation, such judge may order the issue of

the writ of attachment (Form G) against the estate and effects of the Insolvent, addressed to the sheriff of the county in which such writ issues, requiring such sheriff to seize and attach the estate and effects of the Insolvent and to summon him to appear before the court to answer the premises, and such writ shall be subject as nearly as can be to the rules of procedure of the Court in ordinary suits as to its issue and return, and as to all proceedings subsequent thereto before any Court or Judge.

1.—THAT HE IS A CREDITOR.

See notes on sec. 19, *ante.*

Service of Writ, in case Insolvent has no domicile or absconds.

Concurrent Writs.

21. If the defendant in any process for compulsory liquidation, has no domicile in any Province of Canada, or absconds from the Province in which he has his domicile, or remains without such Province, or conceals himself within such Province, service of the Writ of Attachment issued against him under this Act, may be validly made upon him in any manner which the Judge may order, upon application to him in that behalf; and in proceedings for compulsory liquidation, concurrent Writs of Attachment may be issued, if required by the plaintiff, addressed to the sheriffs of districts or counties in any part of Canada other than the District or County in which such proceedings are being carried on.

1.—SERVICE OF WRIT MADE IN ANY MANNER WHICH THE JUDGE MAY ORDER ON APPLICATION.

This application should be made by petition to the Judge, supported by an affidavit of the sheriff, or bailiff, in whose hands the writ is placed for service.

2.—CONCURRENT WRITS.

The object of this is to enable the property of the insolvent which may be beyond the jurisdiction of the sheriff of the place where the writs emanated, to be attached concurrently.

Return of Writs of Attachment.

22. Writs of attachment in proceedings for compulsory liquidation may be made returnable after the expiry of three days from the service thereof, when the defendant resides in Canada, and not more than fifteen miles from the place of return, or when the defendant has no domicile therein; and of one additional day for every additional distance of fifteen miles between such residence, if in Canada, and such place of return; and immediately upon the issue of a writ of attachment under this Act, the Sheriff shall give notice thereof by advertisement thereof (Form H).

1.—AFTER THE EXPIRY OF THREE DAYS.

By the Act of 1864 the delay was ten; by the Amendment Act (18 Vic. c. 18) five days.

2.—THE SHERIFF SHALL GIVE NOTICE.

The notice must be advertised during two weeks in the official Gazette of the Province where the writ has issued; and also, in the Province of Quebec, in every issue, during two weeks, of one newspaper in English, and one in French; and in the other Provinces, in one newspaper in English. The newspapers must be those published at or nearest to the place where the insolvent has his chief place of business. Vide secs. 117 and 143.

The object of this notice is to prevent third parties from disposing of any portion of the estate which may be under their control. Abbott on Ins. Act, 1864.

Sheriff to be Officer of Court issuing Writs. His duty in executing it.

23. For all the purposes of such writ of attachment and in respect of all his duties regarding it, the Sheriff shall be

make an assignment of his estate and effects for the benefit of his creditors.

1. Taken from sub. sec. 2 of sec. 3 Insolvent Act of 1864.

2.—IF A DEBTOR.

The debtor must be a trader, as the operation of the law is confined to traders. And in the Province of Ontario it has been held, that one who has ceased to trade before the 1st of September, 1864, when the insolvent act, which preceded the present one, came into operation, could not be proceeded against under sub. sec. 2 of sec. 3, of that Act, from which this section is derived. Bagwell v. Hamilton, 10, U. C. Jour. 305; see also Lacombe & al. v. Lanctot, 16 L. C. Rep. 166, which will be more fully referred to further on, and in which a somewhat similar decision was given, in the Court of Review, at Montreal.

It may therefore be inferred that as the Act of 1864 was inoperative *quoad* traders residing in the Provinces of New Brunswick and Nova Scotia, this section could not be invoked against such of them who have ceased to trade anterior to the 1st of Sept. 1869, when the present law came into force. True, this sub. sec. of the Act of 1864 says, "If a *trader* ceases to meet his *commercial* liabilities, &c., which the sec. 14 of the present act, substitutes with the words "If a *debtor* ceases to meet his "*iabili-* "*ties generally*," &c., and a debtor may not be a trader. But, as the operation of this act is confined to *traders*, it is submitted that the above authorities are applicable.

3.—CEASES TO MEET HIS LIABILITIES.

In the Act of 1864 this sec. is expressly limited to "commercial liabilities." But as the present statute is limited to traders, it may be urged that ceasing to meet liabilities of a non-commercial nature would not alone place a trader under its operation. It would appear the present act extends the element of the former one in this respect; and, provided the debtor be still a trader, permits the demand of an assignment to be made, when he ceases to meet generally his private debts, as well as those contracted in his business, whereby, on the contestation of the demand, the creditor may be enabled to add weight to the presumption of insolvency of the debtor, through non-payment of his trading liabilities, by establishing also the non-payment generally of his private and non-trading debts.

It has been already remarked that the debtor must be a trader, and that no demand can be made on liabilities of a private nature. Nor can the demand be made simply as a means and with the hope of collecting a debt. The following case of Lacombe & al. v. Lanctot petr., may serve for illustration.

Lacombe and another, creditors of Lanctot, demanded from the latter an assignment under "sec. 3, sub. sec. 2 of Insolvent Act of 1864," from which the sec. of the Act under review is derived. The latter, by petition, contested the demand, on the ground that the debt was a private one, that at the time of the demand he was doing business in partnership with another, that the partnership had not ceased to pay its liabilities, and that he had not ceased to meet his "commercial liabilities."

In evidence it also was admitted by one of the creditors that the demand was made simply to enforce the *payment* of the claims of these two creditors.

The Court held that these facts being proved, were sufficient to sustain the petition; and that this sec. did not permit creditors to use it as a medium of simply collecting debts. It was also evident that the demand was made in the belief that the petitioner would pay the claims by the fear of otherwise jeopardising the credit of the firm in which he was a partner. 16 L. C. Jurist, 166.

4.—GENERALLY AS THEY BECOME DUE.

In England mere stoppage of payment will not place the debtor involuntarily under the operation of the bankrupt law. Vide Doria & Macrae, 127. In France, all traders who cease making payment (*cesse paiemens*) become insolvent, and liable to be dealt with accordingly. Code de Commerce, amdts. 1838, art. 437.

In this act a middle course has been adopted. It neither denies a presumption of insolvency by the stoppage of payment nor treats it as conclusive proof. And while it enables creditors in such cases to prepare to put the estate under their control, in the event of insolvency, it also enables the debtor to relieve himself, by showing the stoppage to be temporary, and not produced by fraud or insufficiency of assets. Vide § 15 *post.*

The meaning attachable to the words of the act may be partially gathered by reference to the following French authorities on the words cessation of payments—*cessation de paiemens*—in art. 437, Code de Commerce, 4 Pard. Droit. Com'l. § 1101; 1 Bedarride des Faillites, § 18. The Judge will, in most of such cases, exercise his discretion as to whether the evidence laid before him establish a general stoppage of payment or not; at least until the jurisprudence in this sec. furnishes a larger list of precedents than at present.

5.—ANY ONE OR MORE CLAIMANTS, &C.

By the Act of 1864 one creditor alone could not make the demand. A joint demand, signed by two or more of the creditors, was requisite.

an officer of the Court issuing such writ, and subject to its summary jurisdiction as such; and under such writ he shall by himself or by such agent or messenger as he shall appoint for that purpose, whose authority shall be established by a copy of the writ addressed to him by name and description, and certified under the hand of the Sheriff, seize and attach all the estate and effects of the insolvent within the limits of the County or District for which such Sheriff is appointed, including his books of account, moneys and securities for money, and all his office or business papers, documents, and vouchers of every kind and description; and shall return, with the writ, a report under oath stating in general terms his action thereon.

1.—A REPORT UNDER OATH.

This means, a report under his oath of office.

2.—REPORT STATING IN GENERAL TERMS.

That is to say, the Sheriff is not required to furnish an inventory of the property seized, but a report under his oath of office, stating, in general terms, that he has performed the duty required of him.

Sheriff may enter house and shop, etc., forcibly.

24. If the Sheriff or officer charged with any writ of attachment is unable to obtain access to the interior of the house, shop, warehouse, or other premises of the defendant named in such writ, by reason of the same being locked, barred or fastened, such Sheriff or officer shall have the right forcibly to open the same.

In whose custody Sheriff shall place estate: duty of such person.

25. If, in the County or District in which is situate the chief place of business of the debtor, official assignees have

been appointed for the purposes of this Act, the Sheriff shall place the estate and effects attached in the custody of one of such official assignees, who shall be guardian under such writ, but if not, he shall appoint as guardian such competent and responsible person as may be willing to assume such guardianship; and the person so placed in possession shall be bound to perform all the duties hereinbefore imposed upon the interim assignee, except the calling of a meeting of creditors for the appointment of an assignee.

1.—TO PERFORM ALL THE DUTIES.

The guardian must therefore prepare a statement, showing, as far as may be practicable, the position of the affairs of the insolvent. He must also prepare a schedule, in the form B appended to this Act, containing the names and residences of the creditors, and the amount due to each; and also an inventory of the insolvent's assets. Vide § 3 *ante*.

2.—EXCEPT THE CALLING OF A MEETING.

The Judge only can order a meeting in this case, as provided in § 27. But at the expiration of three days from the return day of the writ, if no petition to quash or to delay proceedings be fyled, or upon the rendering of the judgment on the petition, if it be dismissed; or immediately on the return of the writ, with the consent of the insolvent, a meeting of the creditors may be ordered by the judge (vide sec. 27); and the guardian shall thereon notify the creditors of such meeting, and send them a list of the creditors as prescribed in § 4.

When Petition may be presented by Insolvent.
Hearing on such Petition.
Proviso.

26. Except in cases where a petition has been presented as provided for by the fifteenth section of this Act, the alleged insolvent may present a petition to the Judge at any time within three days from the return day of the writ, but not afterwards; and may thereby pray for the setting aside of the attachment made under such writ, on the ground that

his estate has not become subject to compulsory liquidation; or if the writ of attachment has issued against a debtor by reason of his neglect to satisfy a writ of execution against him as hereinbefore provided, then on such ground, and also on the ground that such neglect was caused by a temporary embarrassment, and that it was not caused by any fraud or fraudulent intent, or by the insufficiency of the assets of such debtor to meet his liabilities; and such petition shall be heard and determined by the Judge in a summary manner, and conformably to the evidence adduced before him thereon; but proceedings for compulsory liquidation shall not be contested either as to form or upon the merits, otherwise than by a summary petition, in the manner, upon the grounds, and within the delay, hereinbefore provided.

1.—EXCEPT IN CASES WHERE A PETITION HAS BEEN PRESENTED.

"This exception is inserted because the previous petition, if one was presented, must have substantially covered the same ground as that permitted by this clause." Abbott, Notes on Act 1864.

2.—THREE DAYS.

By the Act of 1864, the delay was five. It must be three juridicial days, § 143. In Quebec there must be also three clear days. See Rules Practice No. 12.

3.—BUT NOT AFTERWARDS.

It may be thus assumed the Act does not permit a discretionary power in the Judge to extend the delay under special circumstances. See May v. Larue, cited in Note to § 15, *ante*.

4.—ON THE GROUND THAT HIS ESTATE HAS NOT BECOME SUBJECT TO COMPULSORY LIQUIDATION.

This of course will be the general ground taken by the debtor. But the special grounds of the defence, to the allegations of the affidavit, should be set up in the petition. The insolvent must therein specifically deny the allegations of the plaintiff, or adduce facts in avoidance of their legal effect, or both.

Meeting of Creditors, how called.

27. Immediately upon the expiration of three days from the return day of the writ, if no petition to quash or to stay proceedings be fyled, or upon the rendering of judgment on the petition to quash, if it be dismissed, or immediately upon such return with the consent of the insolvent, the Judge, upon the application of the plaintiff, or of any creditor declaring in such application that he thereby intervenes for the prosecution of the cause, shall order a meeting of the creditors to be held at a time and place named in such order, and after due notice thereof by advertisement, for the purpose of appointing an assignee; and the guardian shall perform the duties imposed upon the interim assignee by section four of this Act.

1.—AFTER THREE DAYS.

See Notes on sec. 26 as to delay.

2.—OR TO STAY PROCEEDINGS.

See sec. 16, *ante*.

3.—OR OF ANY CREDITOR.

Any creditor may intervene in a summary manner, and prosecute the suit, thereby removing an opportunity to the debtor of making an arrangement with the plaintiff to withdraw.

4.—AFTER DUE NOTICE.

The time and place of meeting will be determined by the Judge.

The notice of the meeting must be given according to the rules laid down in § 117 *post*.

Who shall preside at Meeting.

Appointment of Assignee.

28. At the time and place appointed, the Judge or the prothonotary or clerk of the Court in which the proceedings

are carried on shall preside, and the creditors shall have the right to appoint an assignee to the estate and effects of the Insolvent, and the presiding officer shall draw up and sign a record of such appointment which shall be a record of the Court, but if no creditor be present at such meeting, the presiding officer shall have power to adjourn such meeting.

1.—TO ADJOURN SUCH MEETING.

At such time and place as he may deem advisable.

Transfer of Estate from Guardian to Assignee.

29. Upon the appointment of the assignee, the guardian shall immediately deliver the estate and effects in his custody to such assignee; and by the effect of his appointment, the whole of the estate and effects of the Insolvent, whether real or personal, moveable or immoveable, as existing at the date of the issue of the writ, and which may accrue to him by any title whatsoever, up to the time of his discharge under this Act, and whether seized or not seized under the writ of attachment, shall vest in the said assignee in the same manner, to the same extent, and with the same exceptions, as if he had been duly appointed assignee to such insolvent under a voluntary assignment of his estate and effects executed by the insolvent to an interim assignee, and such estate and effects had been duly transferred to him as hereinbefore provided.

1.—THE WHOLE OF THE ESTATE.

See sec. 10, and Notes thereon.

2.—EXISTING AT THE DATE OF THE ISSUE OF THE WRIT.

This Act simply vests in the assignee the estate of the insolvent as existing at the issue of the writ. Similar provision is in the United States law of 1867, § 14. In England it is so vested from the act of bankruptcy. Doria & Macrae, 545, Wright v. Fairfield, 2 B and Ad. 727. Third parties have

therefore sometimes suffered there by dealing with a bankrupt, after an act of bankruptcy of which they were ignorant. With ordinary care such an occurrence is impossible here. Because the act provides that public notice must be given both of an assignment, and of the issue of a writ of compulsory liquidation.

3.—UP TO THE TIME OF HIS DISCHARGE.

The question may here arise whether the insolvent's claim for personal labour performed during the interval between the assignment and discharge, can be attached by the assignee? It would seem a hardship that an insolvent who has committed no fraud, and who may have a large family to support, and whose position may therefore compel him to work, should be unable to recover its value, because his estate is in insolvency. Even if fraud had been committed, the insolvent should be allowed to recover the fruits of daily labour sufficient to procure the necessaries of life. The statute appears to make no provision for such a contingency, except that prescribed in § 65, whereby a majority of the creditors, representing three-fourths of the liabilities, *may* allow the insolvent a sum of money, or any other property out of the estate. In sec. 42 it is provided that if an insolvent shall sue out any writ, anterior to his discharge, he shall give to the defendant such security for costs as shall be ordered by the Court, before the latter can be called upon to plead to the demand; but creates no right in the plaintiff to retain in any case what he may recover thereby. It may be presumed that Courts will adopt, in this case, the rule prevailing in England, where an insolvent may maintain an action for personal labour. Silk v. Osborne, 1 Esp. 140; Williams v. Chambers, 11 Jur. 798; and in that country he may also sue on after-acquired property, Webb v. Fox, 7 T. R. 391; Evans v. Brown, 1 Esp. 170; or, sue on a contract made with him, unless the assignee interferes. Kitchen v. Bartsch, 7 East, 53, Cumming v. Roebuck, Holt, 172. As to the privilege of subsequent creditors, where an insolvent has been allowed by the assignee and the creditors of his insolvent estate, to trade, see Tucker v. Hernaman, 17 Jur. 723.

4.—WITH THE SAME EXCEPTIONS.

See Note to § 10 as to the articles exempted from seizure in the different Provinces.

Proof and registry of appointment.

30. An authentic copy or exemplification, under the hand of the Court, of the record of appointment of an assig-

nee, may be registered at full length in any registry office, without any proof of the signature of the officer and without any memorial; and such registration shall have the same effect as to the real estate of the insolvent and in all other respects, as the registration under this Act of a deed of assignment with deed of transfer annexed.

HOW APPOINTMENT AND DEED OF ASSIGNMENT MAY BE REGISTERED.

Vide § 12, *ante*.

Mr. Edgar, an annotator to the Act of 1864, apprehends that difficult questions may arise by this mode of registration, inasmuch as it dispenses with the necessity of specifying in the deed of assignment, the real estate to be effected thereby. Edgar on Insolvent Act 1864, p. 29. No such difficulties, appears to us, can arise. The Act clearly repeals all antecedent law antagonistic to its provisions. It decrees that the mere registration of a deed of assignment with transfer annexed (vide § 12), or of an authentic copy of the record of an appointment of an assignee (vide § 30), shall render null any subsequent registration of any deed or other instrument upon the real estate of the insolvent. The registration has the same effect as the registration of a deed of sale of the property of a solvent person would have.

Mr. Abbott has properly observed: "The absence of the description of the property conveyed can produce no injurious effects with regard to third persons, for insolvency is public; and as when it occurs no one can acquire a title from the insolvent to any portion of the property held by him previous to his discharge, or even a mortgage upon it, no one can be misled by the want of a description of the property conveyed." Notes on Act 1864, p. 30.

Appointment of Official Assignees by Board of Trade.
In places where there is no Board of Trade.
Security by and removal of Assignees.
Present Official Assignees continued.

31. The Board of Trade at any place, or the Council thereof, shall within three months from the time at which this Act shall come into force, and afterwards, from time to time, within three months after any vacancy by the death, resignation or removal of any official assignee, name any number of persons within the County or District in which

such Board of Trade exists, or within any County or District adjacent thereto in which there is no Board of Trade, to wit: at least one Official Assignee for each of such Counties, and at least three Official Assignees in each District of the Province of Quebec, to be official assignees for the purposes of this Act, and at the time of such nomination shall declare what security for the due performance of his duties, shall be given by each of such official assignees before entering upon them; and a copy of the resolution naming such persons, certified by the Secretary of the Board, shall be transmitted to the Prothonotary or Clerk of the Court in the District or County within which such assignees are resident respectively; and such copy shall be *primâ facie* evidence of the appointment of an official assignee; but such nomination may be made by the Judge, in any District or County wherein or adjacent to which no Board of Trade exists, and also in such District or County wherein or adjacent to which a Board of Trade exists, but in which the Board of Trade shall have failed to make such nomination during the delay aforesaid, and in that case the Judge shall certify such nomination under his hand, and shall file such certificate in the office of the Court over which he presides; and such security as such Judge shall declare in such nomination, shall be given by such official assignee; and the Board or Judge who has appointed an Official Assignee, or the Judge having jurisdiction at the domicile of such official assignee, may remove him upon petition to that effect duly notified to such official assignee, and upon such notice and for such causes as such Board or Judge may deem sufficient; but such removal shall not have the effect of removing such official assignee from the office of assignee to any estate to which he has previously been appointed; and all official assignees now holding that office shall continue to hold the same, but subject to all the provisions of this Act with respect to official assignees:

1.—THE APPOINTMENT OF OFFICIAL ASSIGNEES.

In England they are appointed by the Lord Chancellor, and are limited to thirty. Arch. Bank. 206. In the States, the creditors may appoint any one, except a creditor, to be the assignee; which must be however confirmed by the Judge; and in the absence of such appointment, a Registrar of the bankrupt court, may act. James, Act of 1867, § 13, p. 30.

This law provides that the Board of Trade, of any place, shall appoint a certain number of official assignees to act within the county or district in which such Board may exist. This mode of election has been adopted so as to confine the office to those who may enjoy the confidence of commercial men. The duties of an official assignee require the qualifications of an accountant, the experience of a merchant, and a character for discretion, firmness, and integrity. Boards of Trade will do wisely in exercising the caution of the Board of Montreal in the appointments to this office.

2.—WITHIN THE COUNTY OR DISTRICT.

That is, within the districts in the Province of Quebec, and within the counties elsewhere.

3.—SHALL DECLARE WHAT SECURITY.

The Board of Trade, Montreal, under the present Act, has limited the security for assignees for the counties to $1000.00; and for assignees resident in the city to $4000.00; and has also ruled that an assignee appointed for a county must reside there during his exercise of the office.

To whom and for whose benefit the security shall be given.
Proviso: Creditors may require further security.
If more than one insolvent estate has claims on it.

32. Such security shall be taken in the name of office of the President of such Board of Trade or Judge, for the benefit of the creditors of any person whose estate is or subsequently may be, in process of liquidation under this Act; and in case of the default of any such official assignee in the performance of his duty, his security may be enforced and realized by the Assignee of the estate which suffers by such default, then or subsequently appointed, who may sue in his

own name as such assignee upon such security; Provided always that the giving of such security shall not prevent the creditors of any insolvent from requiring security to be given for their benefit as hereinafter provided; but in that case the security taken in the name of the President of the Board of Trade or Judge shall be regarded as supplementary to the security so required, and shall be enforceable only after discussion of such security; and upon the security so given coming to an end, the official assignee shall be incapable of being appointed interim assignee or guardian until new security be given instead thereof to the satisfaction of the official receiving the same; and if in case of such default it be found that more than one insolvent estate has claims upon such security, the total amount claimed, not exceeding the amount of such security, shall be payable to such of the assignees of such estates as shall be named by the President of such Board of Trade or Judge by an instrument in writing, for that purpose, and may be claimed and recovered by such assignee after a copy of such nomination has been delivered to the surety, who shall be discharged by such payment; and thereafter the assignee so named shall distribute the amount so received among the claimants thereof, including the estate represented by himself, in the next dividend sheet of such estate, subject to contestation like all other items in such sheet; and he shall receive in respect of the amount so received and distributed, a commission of one-half per centum thereon and no more.

1.—SECURITY TAKEN IN THE NAME OF THE OFFICE.

The bond will remain in the office of the Board of Trade, so that in the event of the official assignee becoming liable thereon, it may be accessible to the assignee desiring to enforce it. Proof of the bond may be made, by the proper officer being summoned to produce it, under a *subpœna duces tecum*. Abbott, N. 31.

2.—FURTHER SECURITY "AS HEREINAFTER PROVIDED."

The creditors may demand from the assignee such security as they may name, in addition to what he may have furnished the Board of Trade. See § 39.

In this connection it may be proper to append the 10th Rule issued by the Board of Trade of Montreal, for the guidance of official assignees :—

"X. The official assignee, acting as interim assignee or guardian, shall at the first meeting of creditors for the election of assignee, and before the voting has begun, request the chairman of the meeting to read the following notice to the creditors, and request the secretary to enter in the minutes that the notice has been read.

1st. That the Board of Trade hold no security for any official assignee after the date of the election of assignee by creditors.*

2nd. That the creditors have the power to demand security from the candidates who desire to act as assignee to the estate, and to select the counsel for the assignee to apply to in case of need, and the newspapers in which the insolvent notices are to be published, as well as the bank in which the funds of the estate are to be deposited.

3rd. That no person is recognised as a creditor under the Insolvent Act of 1869, or entitled to vote for an assignee, till his claim is proved, and the value of all securities held by him deducted from his claim.

4th. That the creditors have the power at the meeting for the election of the Assignee, to decide at what place future meetings of creditors are to be held."

Conservatory proceedings.

33. The interim assignee or guardian shall have the right in his own name, and in his capacity of interim assignee or

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* This statement would lead to the belief, that the Board of Trade has fallen into the error of supposing that the statute limits the security to be taken by it to the appointment of the assignee by the creditors.

The secs. 32 and 39 do not appear to sustain that opinion. The first of these expressly declares that in the event of the creditors demanding security, the security so taken by the Board of Trade "shall be regarded as "*supplementary* to the security required, and *shall be enforceable*" after discussion (realizing) of such security. In sec. 39 it is again provided, that "*independent* of the security" given in the name of the Board, the assignee "shall give such other security." These sections seem clearly to establish that the security taken in the name of the Board should be made available to the creditors of an insolvent estate until the assignee may be discharged by the Court. It may be important to creditors in some cases, to be made aware of this.

guardian, as the case may be, to institute any conservatory process or any process or proceeding that may be necessary for the protection of the estate, provided that he shall first have obtained the authority of the Judge for so doing.

1.—INSTITUTE ANY CONSERVATORY PROCESS.

That is, to attach any of the insolvent's estate, which may be being secreted or fraudulently removed; and to prevent the operation of any sale under execution, if advisable.

2.—OBTAINED THE AUTHORITY OF THE JUDGE.

Obtainable by petition, in a summary manner.

Inspectors may be appointed by Creditors. Their duties. Term of office, etc.
Place for meetings to be fixed.
Inspectors to represent the Creditors.

34. At the first meeting of creditors which shall be held for the appointment of an assignee either on a voluntary assignment or in compulsory liquidation, or at any subsequent meeting, the creditors may appoint one or more inspectors either from among themselves, or otherwise, whose services may be gratuitous, or paid for, as the creditors shall decide at such meeting, and who shall superintend and direct the assignee in the performance of his duties under this Act, until the next meeting of creditors; and if their appointment be not then or at some subsequent meeting revoked, they shall continue to hold the same till the final closing of the estate; and at such meeting and at subsequent meetings from time to time the creditors may fix, by resolution, the City, Town or other place in which meetings of creditors shall thereafter be held; and thereafter no meetings held elsewhere shall be valid; and whenever under this Act the consent, authority or direction of the creditors is required, to enable the assignee to perform any act, or to adopt any

course, the unanimous consent, sanction, authority or directions of the inspectors, if any there be, evidenced by a writing signed by them and deposited with the assignee, shall be held and taken to be the consent, sanction, authority or directions of the creditors in that behalf, save and except in the case of the proposed sale of the entire estate of the Insolvent as hereinafter provided; subject always however to revision by the creditors at any meeting thereof held for the purpose.

1.—MAY APPOINT ONE OR MORE INSPECTORS.

This express provision for the appointment of Inspectors, is not to be found in the Act of 1864, nor in the Amendment Act. In England, Inspectors may be appointed to watch the interests of separate creditors, and advise the assignee of an insolvent who may have been trading in partnership, so as to prevent the joint or partnership creditors, from exercising any undue power over the private property of the Insolvent. Arch. Bank. 591.

By this law, the inspectors will act for the creditors generally. See secs. § 37 and 72.

2.—INSPECTORS' SERVICES MAY BE PAID FOR AS THE CREDITORS SHALL DECIDE.

The amount of remuneration may be decided by a majority of all the creditors, for sums of $100, and upwards, *present at the meeting*, and representing the majority in value of such creditors. But if the majority in number, do not agree with the majority in value, the views of both may be embodied in resolutions, and submitted, with a statement of the vote taken to the judge, who shall decide thereon. In this way, at a meeting of creditors, all questions must be determined, unless otherwise ordered by the act. See § 118. See also § 119.

3.—WHENEVER, UNDER THIS ACT, THE CONSENT, ETC., OF CREDITORS IS REQUIRED.

A consent of creditors may be necessary to enable the assignee to do any thing which the creditors may declare shall not be done without their consent, unless the act otherwise provides (§ 38). But, by the section, under review, it would appear the unanimous consent, given in writing, of the inspectors, is now sufficient; except in the case of sale, in one lot, of the Insolvent's estate, for which, with the terms and conditions, the consent of creditors themselves, must be previously obtained. Vide § 41.

If an offer of composition be made and accepted.

35. If at such meeting the Insolvent shall make an offer of composition, and such offer be approved by the creditors, they may make such order as they may deem expedient, either for suspending the disposal of the estate and all or any proceedings tending thereto, for such time as may be fixed by such meeting, or for any other purpose.

1.—IF AT SUCH MEETING.

The first meeting.

2.—BE APPROVED BY CREDITORS.

The vote necessary for such approval, will be regulated by § 118. See notes on § 34, *ante*. The deed of composition and discharge, must, however, be signed by the majority of all the creditors, of $100 and upwards, and representing three-fourths in value of the amount of liabilities. § 94.

OF ASSIGNEES.

Notice by Assignee. Form.

36. Immediately upon his appointment the assignee shall give notice thereof by advertisement (Form I).

Calling meetings of Creditors.

37. The assignee shall call meetings of creditors, whenever required in writing so to do by the inspectors, or by five creditors stating in such writing the purpose of the intended meeting and making themselves liable for the expense of calling the same; or whenever he is required so to do by the Judge, on the application of any creditor, of which application he shall have notice; or whenever he shall himself require instructions from the creditors; and he shall state succinctly in the notice calling any meeting, the purposes of such meeting.

1.—THE ASSIGNEE SHALL CALL MEETINGS.

The mode of calling meetings is prescribed in § 117.

Assignee to obey instructions and deposit moneys in a Bank, etc.

Interest thereon.

Bank pass-book to be produced.

38. The assignee shall be subject to all rules, orders and directions, not contrary to law, or to the provisions of this Act, which are made for his guidance by the creditors; and until he receives directions from the creditors in that behalf,

if there be a Bank or agency of a Bank in the place or county in which the insolvent has his place of business or within fifteen miles of such place, he shall deposit weekly, at interest, in the name of the estate all moneys received by him, in the Bank or Bank Agency in or nearest to the place where the insolvent so carries on business; but he shall not deposit moneys belonging to the estate, in his own name in any Bank, on pain of dismissal by the Judge on the summary petition of any creditor; and the interest received upon deposits shall appertain to the estate, and shall be distributed in the same manner and subject to the same rights and privileges as the capital from which such interest accrued; and if in any account or dividend sheet made subsequent to any deposit in a Bank, the assignee shall omit to account for or divide the interest then accrued thereon, he shall forfeit and pay to the estate to which such interest appertains, a sum equal to three times the amount of such interest; and he may be constrained so to do by the Judge upon summary petition and by imprisonment as for a contempt of Court; And at every meeting of inspectors or of creditors, the assignee shall produce a Bank pass-book shewing the name in which the Bank account of the estate is kept at such Bank, and all the transactions with such Bank connected with such account, of which production mention shall be made in the minutes of such meeting, or it shall be conclusively presumed not to have been produced thereat.

ASSIGNEE SHALL BE SUBJECT TO ALL RULES, ETC., BY CREDITORS.

The English bankrupt law grants but a limited power to creditors. The Scotch law is similar in this respect to the present act. See § 82, § 96, § 97, § 101, Kinnear 103, *et seq.* So also is the old French Ord. of 1673. Jousse, Com. on ord. 1673, tit. 11, arts. 5, 6, 7. In the States, except as to such cases wherein creditors are specifically empowered to act, the Court makes the orders for the proper fulfilment of the duties of the assignee. James, Bank. Law, 1867, p. 75.

Further duties of Assignee, to keep minutes, etc.
To give further security, if required.
Form of bond, etc.

39. The interim assignee, assignee or guardian, as the case may be, shall attend all meetings of creditors, and take and preserve minutes of such meetings, signed by himself, and signed and certified at the time by the Chairman, or by three creditors present at the meeting; and the assignee shall also keep a correct register in duplicate of all his proceedings, and of the reception of all papers and documents served upon or delivered to him, and of all claims made to or before him, and shall enter therein in the first place the minutes of all meetings of creditors held before or at the time of his appointment, as delivered to him; one of which duplicates shall remain in the office of the Prothonotary or Clerk of the Court, and shall be written up and completed by the assignee monthly from the duplicate in his own possession; and also if required, and independent of the security hereinbefore required to be given, the assignee, in any case, shall give such other security, and in such manner as shall be ordered by a resolution of the creditors, and shall conform himself to such directions in respect thereof, and in respect of any change or modification thereof or addition thereto, as are subsequently conveyed to him by similar resolutions; and in every such case, the bond or instrument of security shall be taken in favor of the creditors, by the name of the "Creditors of A. B., an Insolvent, under the Insolvent Act of 1869," and shall be deposited in the office of the Court, and in case of default by the assignee on whose behalf it is given, may be sued upon by any assignee, who shall be subsequently appointed, to the same estate, in his own name as such assignee: And it shall be the duty of the assignee at the meeting by which he is appointed, if present thereat, or if not,

then at the next meeting thereof, to bring before such meeting the question of the security to be given by him.

1.—TO GIVE FURTHER SECURITY IF REQUIRED.

See notes on § 32 *ante*, and foot note thereon, as to the nature of the security purported to be taken by the Board of Trade of Montreal, according to the rules adopted by that Board for the observance of official assignees.

In the district of Montreal, it may be at present advisable for creditors to examine the nature of the security, and the terms on which it is held by the Board of Trade, before resolving upon the amount of, or the necessity for, additional security.

2.—AND SHALL CONFORM HIMSELF.

Non-conformance with the resolutions of the creditors, enables the latter to effect his dismissal. *Post*, § 51.

Powers of Insolvent vested in Assignee. Exception.

40. All powers vested in any Insolvent which he might have legally executed for his own benefit, shall vest in, and be executed by the assignee, in like manner and with like effect as they were vested in the Insolvent, and might have been executed by him; but no power vested in the Insolvent or property or effects held by him as Trustee or otherwise for the benefit of others, shall vest in the assignee under this Act.

1.—This sec. is copied from sec. 4, sub. sec. 7, of the Act of 1864.

2.—ALL POWERS VESTED IN ANY INSOLVENT, &C., AS TRUSTEE, OR OTHERWISE.

Under this section of the Act of 1864, of which this is a copy, it has been held in Quebec:—1st. That goods deposited with a firm, to be sold on commission, are properties held for the benefit of another, and therefore on the insolvency of such firm, they do *not* vest in the assignee;—and,

2ndly. That such goods cannot be detained from the owner by the assignee, though they had been seized by the landlord for rent, prior to the issue of the attachment in insolvency, and he had fyled a claim with the assignee, asserting his *lien* for unpaid rent. Lawlor v. Walker, 17 L. C. Rep. 349.

The Court therefore treated the merchant, entrusted with the sale of the goods on commission, as a trustee, under that sub.-section.

The owner of goods may, under such circumstances, reclaim them by petition to the Judge, in a summary manner, according to § 50.

Assignee to sell property of Insolvent, and in what manner. Proviso for sanction of Creditors.

41. The assignee shall wind up the affairs of the Insolvent, by the sale, in a prudent manner, of all Bank and other stocks, and of all moveables belonging to him, and by the collection of all debts, but in all of such respects shall be guided by the direction of the creditors given as herein provided; but nothing in this Act contained shall prevent the assignee from selling the entire estate and effects of the Insolvent, real and personal, in one lot, either for a gross price, or at a dollar rate upon the liabilities of the Insolvent, and upon such other terms and conditions as to the payment of the price, the payment or assumption and payment, by the purchaser of mortgages or hypothecary debts, and the payment of privileged debts, as may be considered advantageous, such conditions however, in the case of mortgages, hpyothecations, or privileged claims, not to diminish the security of the creditors holding the same nor to extend the term of payment agreed to by them, without their express consent: Provided always that such sale and all and every the terms and conditions thereof and connected therewith be first approved at a meeting of creditors; and such meeting may be held at any time after the appointment of an assignee, provided notice by advertisement, as provided by this Act, has been given by the assignee, interim assignee or guardian, as the case may be.

This is an enlargement of sec. 4, sub. sec. 8, of the Act of 1864. In the first part it provides, that the assignee may wind up the estate by the sale of the personal property, and by the collection of the debts, under *the guidance of the creditors*, as herein provided; and secondly, that he may sell the real and personal estate "in one lot," provided the sale, with the terms and conditions, "be first approved at a meeting of creditors."

By sec. 34 it is declared that the inspectors, who may be appointed, are empowered to authorize the assignee to do anything for which the assignee would otherwise require the consent of the creditors, "*except* in the case of the proposed sale of the "*entire* estate of the insolvent." It is therefore evident that when inspectors have been appointed to an estate, their written authority will be alone sufficient to direct the assignee in winding it up, in the mode prescribed by the first part of this section; and that it is only where the real and personal estate are proposed to be sold in one lot, that consent must be obtained from the creditors themselves at a special meeting.

Assignee to sue for debts due to Insolvent.
If the Insolvent sues for the same.

42. The Assignee, in his own name as such, shall have the exclusive right to sue for the recovery of all debts due to or claimed by the Insolvent, of every kind and nature whatsoever; for rescinding agreements, deeds and instruments made in fraud of creditors and for the recovery back of moneys alleged to have been paid in fraud of creditors, and to take, both in the prosecution and defence of suits, all the proceedings that the Insolvent might have taken for the benefit of the estate, or that any creditor might have taken for the benefit of the creditors generally; and may intervene and represent the Insolvent in all suits or proceedings by or against him, which are pending at the time of his appointment, and on his application may have his name inserted therein, in the place of that of the Insolvent; And if after the appointment of an assignee, and before he has obtained his discharge under this Act, the Insolvent shall sue out any writ or institute or continue any proceeding of any kind or

nature whatsoever, he shall give to the opposite party such security for costs as shall be ordered by the Court before which such suit or proceeding is pending, before such party shall be bound to appear or plead to the same or take any further proceeding therein.

1.—THE ASSIGNEE IN HIS OWN NAME, ETC., SHALL HAVE EXCLUSIVE RIGHT TO SUE.

This is partly similar to sub. sec. 9 of sec. 4 of Act of 1864.

In Ontario it has been held that under that Act the Judge, having general jurisdiction in matters of insolvency, may sanction a suit in the name of the assignee for the benefit of the estate, notwithstanding a majority both in number and value of the creditors had passed a resolution forbidding further proceedings. In *re* Lamb, 13 U. C. Chancy. Rep. 391.

2.—THE INSOLVENT SHALL SUE OUT ANY WRIT.

See Notes on this subject, on *ante* sec. 29.

3.—GIVE TO THE OPPOSITE PARTY SUCH SECURITY FOR COSTS.

An insolvent, after his assignment, is presumed to have no property. Therefore if he should be defeated in a suit at law, the defendant would be unable to recover from him the costs, to which he has been subjected, unless security had been given.

If a partner becomes insolvent, partnership thereby dissolved, etc.

43. If a partner in an unincorporated trading company or copartnership, becomes insolvent within the meaning of this Act, and an Assignee is appointed to the estate of such Insolvent, such partnership shall thereby be held to be dissolved; and the Assignee shall have all the rights of action and remedies against the other partners in such company or copartnership, which any partner could have or exercise by law or in equity against his copartners after the dissolution of the firm, and may avail avail himself of such rights of

action and remedies, as if such copartnership or company had expired by efflux of time.

From sub. sec. 10, sec. 4, Act 1864.
This provision is similar to the English law on this subject. Archbold, Bank. 319. In France the bankruptcy of a partner gives the creditor no greater right than may be possessed by the insolvent, to demand the dissolution of the firm. 4 Pard. Droit Coml. No. 1066.

Sale of debts, the collection of which would be too onerous.

44. After having acted with due diligence in the collection of the debts, if the Assignee finds there remain debts due, the attempt to collect which would be more onerous than beneficial to the estate, he may report the same to the creditors, and with their sanction he may obtain an order of the Judge to sell the same by public auction, after such advertisement thereof as may be required by such order; and pending such advertisement, the Assignee shall keep a list of the debts to be sold, open to inspection at his office, and shall also give free access to all documents and vouchers explanatory of such debts; but all debts amounting to more than one hundred dollars shall be sold separately, except as herein otherwise provided.

A Creditor may obtain an order of a Judge authorizing him to take any special proceedings at his own risk.

45. If at any time any creditor of the Insolvent shall desire to cause any proceeding to be taken which in his opinion would be for the benefit of the estate, and the assignee shall under the authority of the creditors or of the Inspectors refuse or neglect to take such proceeding after being duly required so to do, such creditor shall have the right to obtain an order of the Judge authorizing him to take such proceeding in the name of the assignee, but at his own ex-

pense and risk, upon such terms and conditions as to indemnity to the assignee as the Judge may prescribe, and thereupon any benefit derived from such proceeding shall belong exclusively to the creditor instituting the same for his benefit and that of any other creditors who have joined him in causing the institution of such proceeding; but if before such order is granted, the assignee shall signify to the judge his readiness to institute such proceedings for the benefit of the creditors, the order shall be made prescribing the time within which he shall do so, and in that case the advantage derived from such proceding shall appertain to the estate.

1.—CREDITOR OF INSOLVENT SHALL DESIRE TO CAUSE ANY PROCEEDING TO BE TAKEN.

This provision is not to be found in the Act of 1864, nor in the Amendment Act.

It is apparently derived from the law of England, where if the assignees refuse to bring an action, the creditor, on giving security, may do so in the names of the assignees. Arch. Bank. 514.

Rights of Purchasers of Insolvents' Debts.

46. The person who purchases a debt from the Assignee may sue for it in his own name, as effectually as the Insolvent might have done and as the Assignee is hereby authorized to do; and a Bill of Sale (Form K), signed and delivered to him by the Assignee, shall be *primâ facie* evidence of such purchase, without proof of the handwriting of the Assignee; and no warranty, except as to the good faith of the Assignee, shall be created by such sale and conveyance, not even that the debt is due.

Sale of Real Estate, on certain conditions.

47. The Assignee may sell the real estate of the Insolvent, but only after advertisement thereof, for a period of two months, and in the same manner as is required for the

actual advertisement of sales of real estate by the sheriff in the district or place where such real estate is situate, and to such further extent as the assignee deems expedient; but the period of advertisement may be shortened to not less than one month by the creditors with the approbation of the Judge; but in the Province of Quebec such abridgement shall not take place without the consent of the hypothecary creditors upon such real estate (if any there be), and if the price offered for any real estate at any public sale duly advertised as aforesaid, is, in the opinion of the Assignee, too small, he may withdraw such real estate, and sell it subsequently under such directions as he receives from the creditors.

1.—THE ASSIGNEE MAY SELL THE REAL FSTATE, &C.

The place of sale is apparently left to the judgment of the assignee. The mode of advertising it, must be that prevailing in the Province where the property is situate. In Quebec, it must be advertised in the Official Gazette, and in one English and one French newspaper; and, in addition, announced at the church door of the parish where the land lies. See Civ. Pro. L. C. art. 648. The assignee may, however, advertise to such further extent—through local papers and placards, &c.—as may appear expedient to him.

2.—THE PERIOD OF ADVERTISEMENT MAY BE SHORTENED BY THE CREDITORS, WITH APPROBATION OF THE JUDGE, AND HYPOTHECARY CREDITORS, IF ANY.

Where Inspectors have been appointed, it may be inferred that their unanimous consent, in writing, will be tantamount to that of the creditors. See § 34 *ante*. The consent of the hypothecary creditors (mortgagees) should be given in the same manner.

3.—SELL IT SUBSEQUENTLY UNDER SUCH DIRECTIONS AS HE RECEIVES FROM THE CREDITORS.

"The first attempt at sale should be by public auction, but the subsequent sale may be by private bargain, if so ordered by the creditors." Abbott on Ins. Act 1864, p. 36. Or, by the Inspectors under the present act.

Effect of Sales of Real Estate.
Form of Deed and Terms.

48. All sales of real estate so made by the Assignee shall vest in the purchasers all the legal and equitable estate of the insolvent therein, and in all respects shall have the same effect as to mortgages, hypothecs or privileges then existing thereon, as if the same had been made by a sheriff in the Province in which such real estate is situate, under a writ of execution issued in the ordinary course, but no other, greater, or less effect than such sheriff's sale; and the title conveyed by such sale shall have equal validity with a title created by a sheriff's sale; and the deed of such sale which the Assignee executes (Form L), shall have the same effect as a sheriff's deed has in the Province within which the real estate is situate; but he may grant such terms of credit as he may deem expedient, and as may be approved of by the creditors, for any part of the purchase money; except that no credit shall be given in the Province of Quebec for any part of the purchase money coming to any hypothecary or privileged creditor without the consent of such creditor; and the Assignee shall be entitled to reserve a special hypothec or mortgage by the deed of sale as security for the payment of such part of the purchase money as shall be unpaid; and such deed may be executed before witnesses or before notaries, according to the exigency of the law of the place where the real estate sold is situate.

THE SALE OF REAL ESTATE BY ASSIGNEE SHALL HAVE THE SAME EFFECT AS THAT OF A SALE BY A SHERIFF, UNDER AN EXECUTION IN THE PROVINCE WHERE THE PROPERTY IS SITUATE.

In Ontario, the title that is given by a Sheriff's sale is the title that was in the execution debtor at the time the writ was placed in the Sheriff's hands. But in the purchase from an assignee, it would appear clear the purchaser would obtain the title of the

insolvent in the property from the date of the assignment, or the issue of the writ in compulsory liquidation. Edgar, Notes on Act 1864, p. 51.

In Quebec, a sale by the Sheriff purges the property of all claims and mortgages, except dower, created anterior to the mortgages,—Civ. Code L. C. art. 1447; or entail (*substitution*), ibid. art. 950; or seignorial rights, ibid. art. 2081. With these exceptions,—of dower, entail, crown dues, and seignorial rights,—the purchaser of real estate, in that Province, would under this act, obtain the property clear of all incumbrances, registered or not. The mortgage creditors have only the right to be paid, by privilege, from the proceeds of the sale, according to the registration of their claims. See § 49, *post.* But as regards the unpaid vendor of the property, the assignee, by this clause, is authorized, with his consent, to reserve a special mortgage in the deed to be given as security for such part of the purchase money as may have been unpaid by the insolvent, and to sell, on credit, according as the mortgagees may consent; or, if there be no mortgagees, with the consent of the creditors, or inspectors.

Sales in Quebec may be subject to certain charges.
Folle enchère.
Certificate of Registrar.
Code of Procedure to apply.
Order of distribution.

49. In the Province of Quebec such sale may be made subject to all such charges and hypothecs as are permitted by the law of the said Province to remain chargeable thereon, when sold by the sheriff, and also subject to such other charges and hypothecs thereon, as are not due at the time of the sale, the time of payment whereof shall not however be extended by the conditions of such sale; and also subject to such other charges, and hypothecs as may be consented to in writing by the holders or creditors thereof. And an order of re-sale for false bidding may be obtained from the judge by the assignee upon summary petition; and such re-sale may be proceeded with after the same notices and advertisements, and with the same effect and consequences as to the false bidder, and all others, and by means of similar proceed-

ings, as are provided in ordinary cases for such re-sales, in all essential particulars and as nearly as may be without being inconsistent with this Act; and as soon as immoveables are sold by the Assignee, he shall procure from the Registrar of the Registration Division in which each immoveable is situate, a certificate of the hypothecs charged upon such immoveable and registered up to the day of the issue of the writ of attachment, or of the execution of the deed of assignment by which the estate of the Insolvent was brought within the purview of this Act, as the case may be; And such certificate shall contain all the facts and circumstances required in the Registrar's certificate obtained by the Sheriff subsequent to the adjudication of an immoveable in conformity with the provisions of the Code of Procedure and shall be made and charged for by the Registrar in like manner; And the provisions of the Code of Procedure as to the collocation of hypothecary, and privileged creditors, the necessity for and the filing of oppositions for payment and the costs thereon shall apply thereto under this Act as nearly as the nature of the case will admit; And the collocation and distribution of the money arising from such sale shall be made in the dividend sheet in the same manner as to all the essential parts thereof, as the collocation and distribution of moneys arising from the sale of immoveables are made in the appropriate Court in ordinary cases, except in so far as the same may be inconsistent with any provision of this Act.

1.—IN THE PROVINCE OF QUEBEC, SALE OF REAL ESTATE BY ASSIGNEE MAY BE MADE, SUBJECT TO CERTAIN CHARGES AND MORTGAGES AS ARE PERMITTED BY LAW, WHEN SOLD BY SHERIFF.

See Notes on last previous sec. 48, as to what charges remain on property sold by Sheriff. The clause says—"such sale *may* "be made, subject to all such charges." It would thus appear

as if it were permissive to sell clear of all incumbrances, such as dower, seignorial rights. Surely such cannot be the intention of the act. The word "shall" ought to have been used for "may." But whether sold subject to such charges, or not, it is apprehended they would be unaffected thereby. See secs. 58 and 59 *post*.

2.—RE-SALE MAY TAKE PLACE, IN THE SAME MANNER, AND WITH THE SAME EFFECT, AS A SALE A LA FOLLE ENCHERE, BY A SHERIFF.

The mode of advertising and re-selling real estate, sold by a Sheriff, and the legal effect thereof, in Quebec, will be found explained in the Code of Civil Procedure, arts. 690 *et seq*.

3.—THE CODE OF PROCEDURE SHALL APPLY AS TO THE FYLING OF CLAIMS AND OPPOSITIONS TO THE PROCEEDS OF SALE OF REAL ESTATE, &C.; AND AS TO THE DISTRIBUTION OF SUCH PROCEEDS.

The sec. provides, that the rules of the Code of Civil Procedure shall be applied in these respects "as nearly as the nature of the "case will admit."

When unnecessary to fyle such claims.—By this sec. the assignee is required to obtain the certificate of the Registrar of the mortgages and claims entered against the real estate sold, or to be sold. By the code, the creditors of claims thus registered need not fyle their claims or oppositions to secure payment, from the proceeds of the sale. Art. 719. Consequently no such claims need be made by a mortgagee or registered creditor, to the proceeds of real estate sold under this act. But if such proceeds be wholly or partially insufficient to pay a claim, he can rank on the estate generally with the unsecured creditors, for the whole or any unpaid balance.

Within what delay oppositions may be made.—Under the code, oppositions for payment on claims, not registered, must be made, within six days after the return. That is, after the return of the Sheriff to the Court, stating the amount in his hands from the sale, available for distribution. Art. 720. Under this act it may be presumed they should be filed within six days from the deposit of the purchase money with the assignee.

The opposition should state distinctly the nature of the claim, with the dates and place, and the documents or titles in support of its pretensions. See secs. 60, 70, and 131 *post*.

When dividend or collocation sheet should be prepared, of proceeds of real estate.—By the code, the Prothonotary must prepare a scheme of distribution between the sixth and twelfth day after

the Sheriff's return. Art. 724. Under this act, it may be assumed it should be made by the assignee within twelve days from the payment by the purchaser.

In this sheet the name of each claimant must be inserted, in numerical order, and the nature and amount of each claim, and whether it affects the whole or a part of the property. Ibid, art. 726.

How such claims shall rank.—The moneys must be divided and paid in the following order:—

I. The law costs in selling the property, &c. Ibid art. 788.

II. The mortgages according to the date of registration.

III. Non-registered claims, *pro rata*, according to the provisions of this act.

As regards the ranking of certain special privileges, which in ordinary cases may not arise, such as that of the builder, of seignorial dues, &c., reference is directed to the Civil Code, art. 2009 *et seq.*, and the Code of Procedure, art. 727 *et seq.* The assignee who is not experienced in these matters, may find it necessary to consult his legal adviser, before completing a collocation.

Assignees, guardians, etc., to be subject to the orders of the Court, or Judge, etc.

50. Every Interim Assignee, Guardian and Assignee shall be subject to the summary jurisdiction of the Court or Judge in the same manner and to the same extent as the ordinary officers of the Court are subject to its jurisdiction, and the performance of their respective duties may be compelled, and all remedies sought or demanded for enforcing any claim for a debt, privilege, mortgage, hypothec, lien or right of property upon, in or to any effects or property in the hands, possession or custody of the Assignee, may be obtained, by an order of the Judge on summary petition in vacation, or of the Court on a rule in term and not by any suit, attachment, opposition, seizure or other proceeding of any kind whatever; and obedience by the Assignee to such order may be enforced by such Judge or Court under the penalty of imprisonment, as for contempt of Court, or disobedience thereto, or he may be dismissed, in the discretion of the Court or Judge.

1.—ON SUMMARY PETITION, ETC.

The clear terms in which this section declares that any claim for debt, privilege, mortgage, lien, or right of property, may be made by petition, in vacation, or by rule of Court, in term, should set at rest such questions as that raised by, and now pending, in appeal (Montreal), in Moritz v. Whyte, as to whether a judge, in vacation, has the right to order property, in the hands of the assignee, to be returned to the rightful owner, on petition.

Assignee may be removed or resign.

51. Any Assignee may be removed, either at the will of the creditors or upon his own resignation, by a resolution passed by the creditors present or represented at a meeting duly called for the purpose; and if the Assignee dies or is removed they shall have the right of appointing another Assignee, either at the meeting by which he is removed, or at any other called for the purpose; but the Assignee so removed shall, nevertheless, remain subject to the summary jurisdiction of the Court and of any Judge thereof, until he shall have fully accounted for his acts and conduct while he continued to be Assignee.

1.—ANY ASSIGNEE MAY BE REMOVED.

No complaint appears necessary to effect a removal. The creditors' desire, is sufficient.

2.—BY A RESOLUTION.

This must be passed by a majority in number and value of the creditors present, according to § 118 *post*.

Remuneration of Assignee, Interim Assignee and Guardian.

52. The remuneration of the Interim Assignee, Guardian and Assignee respectively, shall be fixed by the creditors at their first meeting or at any other meeting called for the purpose; but if not so fixed before a final dividend is de-

clared, shall be put into the dividend sheet at a rate for the Interim Assignee or Guardian, such as the Assignee shall deem reasonable, and for the Assignee not exceeding five per centum upon the cash receipts,—subject to contestation by any party interested as being insufficient or as exceeding the value of the services rendered, in the same manner as any other item of the dividend sheet; But no sum of money shall be inserted as a remuneration to the Assignee unless the question of such remuneration shall have been previously brought before a meeting of creditors competent to decide it.

In case of death of Assignee, estate how vested.

53. Upon the death of an Assignee the estate of the Insolvent shall not descend to the heirs or representatives of the Assignee, but shall become vested in any Assignee who shall be appointed by the creditors in his place and stead; and in case of the office of Assignee becoming vacant from any cause, the estate shall be under the control of the Judge until a new Assignee is appointed.

Final account and discharge of Assignee.

54. After the declaration of a final dividend, or if after using due diligence the Assignee has been unable to realize any assets to be divided, the Assignee may prepare his final account, and may present a petition to the Judge for his discharge from the office of Assignee after giving notice of such petition to the Insolvent and also to the Inspectors if any have been appointed, or to the creditors by circular, if no Inspector has been appointed; and shall produce and file with such petition a bank certificate of the deposit of any dividends remaining unclaimed, or of any balance in his hands, and a statement showing the nominal and estimated value of the assets of the Insolvent, the amount of claims

proved, dividing them into ordinary, privileged and hypothecary claims, the amount of dividends or of composition paid to the ordinary creditors of the estate, and the entire expense of winding up the same, and thereupon the Judge after causing the account to be audited by the Inspectors or by some creditor or creditors named by him for the purpose, and after hearing the parties, may refuse or grant conditionally, or unconditionally the prayer of such petition.

OF DIVIDENDS.

Accounts and Statements by Assignee.

55. Upon the expiration of the period of one month from the first insertion of the advertisements giving notice of the appointment of an Assignee, or as soon as may be after the expiration of such period, and afterwards from time to time at intervals of not more than three months, the Assignee shall prepare and keep constantly accessible to the creditors, accounts and statements of his doings as such Assignee, and of the position of the estate, and at any similar intervals shall prepare dividends of the estate of the insolvent.

1.—OF ONE MONTH.

By the Act of 1864, the delay was two,—vide Ins. Act 1864, sec. 5; in Scotland it is four,—Kinnear, Bank. p. 145; in England, the delay is fixed by the Court,—Arch. Bank. 422.

The assignee, as soon as appointed, must notify the creditors thereof, and request them to fyle their claims within the prescribed delay. See § 36 *ante*. During this interval it will be the duty of the assignee to proceed with the realization of the estate, according to the provisions of 41 *et seq.*, and with the intigation of its condition. "As it may be reasonably expected "that during this period the greater portion of the creditors will "have fyled their claims, at its termination the assignee should "be able to attain a very close approximation to the actual posi- "tion of its affairs, and he is therefore then required to lay before "the creditors information he has obtained." Abbott, Ins. Law, 1864, p. 39.

2.—AT ANY SIMILAR INTERVALS.

That is, at every interval of not more than three months from the date of the first meeting, the assignee shall prepare dividends of the estate.

In the Act of 1864, the intervals were of six months each.

What claims shall rank on the estate.

56. All debts due and payable by the insolvent at the time of the execution of the deed of assignment, or at the time of the issue of a writ of attachment under this Act, and all debts due but not then actually payable, subject to rebate of interest, shall have the right to rank upon the estate of the insolvent; and any person then being, as surety or otherwise, liable for any debt of the insolvent, who subsequently pays such debt, shall thereafter stand in the place of the original creditor, if such creditor has proved his claim on such debt; or if he has not proved shall be entitled to prove against and rank upon the estate for such debt, to the same extent and with the same effect as such creditor might have done.

1.—ALL DEBTS DUE AND PAYABLE, ETC., AT THE TIME OF THE EXECUTION OF A DEED OF ASSIGNMENT, ETC.

This has been held to include debts which may become due by non-payment of composition anterior to the act of insolvency. For example, by an agreement between debtor and creditor, the latter agreed to accept by way of composition certain notes of the former, payable at specified times; and it was provided that the debtor should also give his note for the whole debt, and that if he should be guilty of any default in paying composition notes, thecreditor should rank on the estate for the whole debt. The notes were given—default made—and debtor became insolvent.

Held in Ontario, that the stipulation was not illegal, and that there having been default before insolvency, the creditor was entitled to prove for the whole debt. In *re* McRae, 15 Chy. Rep. 408. This decision was rendered on the Act of 1864, which contains, in sub. sec. 2 of sec. 5, provisions similar to the sec. under review.

Debts incurred subsequently to the assignment could not rank on the estate.

With regard to rent, however, the landlord may, in Quebec, claim for the amount payable to the end of the current yearly term after the assignment, or the attachment, whether there be a lease or not. This may be assumed, because the Act provides

that any privileges existing, in any Province, shall not be affected unless expressly so declared (secs. 58 and 59 *post*); and by the common law of that province, the owner of premises, rented yearly, without a lease, can claim payment by privilege for the current year. Civ. Code, art. 2005.

In sec. 84 *post*, the preferential lien of the landlord in the provinces of Ontario, New Brunswick, and Nova Scotia, is restricted to rent due during the period of one year last previous to the assignment or attachment, and from thence so long as the assignee may retain the premises leased. § 81 *post*. See also § 77 *et seq*.

2.—SUBJECT TO REBATE OF INTEREST.

The interest should be calculated at the rate of six per centum in the Provinces of Ontario and Quebec, that being the legal rate, where no other has been agreed on, except as regards banks and certain other corporate bodies. In the other Provinces it will be regulated according to the laws prevailing there.

The interest will be calculated from the date of the assignment, or the issue of the writ of attachment.

3.—SURETY LIABLE FOR ANY DEBT OF INSOLVENT, ETC.

May rank on the estate, after he has paid the debt for which he became surety; but not otherwise. This is according to the laws of England, Scotland, France, and United States. See Arch. Bank. 156; Kinnear, Bank. 76; 2 Bedarride, des Faillites, Nos. 881, 882; Avery & Hobbs, Bank. U. S., pp. 133, 145.

Case of Contingent Claims provided for.

57. If any creditor of the insolvent claims upon a contract dependent upon a condition or contingency, which does not happen previous to the declaration of the first dividend, a dividend shall be reserved upon the amount of such conditional or contingent claim until the condition or contingency is determined; but if it be made to appear to the Judge that such reserve will probably retain the estate open for an undue length of time, he may, unless an estimate of the value thereof be agreed to between the claimant and the Assignee, order the Assignee to make an award upon the value of such con-

tingent or conditional claim, and thereupon the Assignee shall make an award after the same investigation, and in the same manner and subject to a similar appeal, as is hereinafter provided for the making of awards upon disputed claims and dividends, and for appeals from such awards; and in every such case the value so established or agreed to shall be ranked upon as a debt payable absolutely.

1.—CLAIMS UPON A CONTRACT DEPENDENT UPON A CONDITION.

Such as an annuity, or life rent, or a debt payable only in the event of the creditor surviving the debtor. This clause is evidently taken from the English Act 12 & 13 Vic. c. 106, sec. 177; and the Scotch Act 23 and 24 Vic. c. 33, sec. 53.

2.—ORDER THE ASSIGNEE TO MAKE AN AWARD ON THE VALUE OF SUCH CONTINGENT CLAIM.

This award may be regulated according to life assurance tables or other reliable data.

Rank and privilege of Creditors: Proviso as to Creditors holding security.

58. In the preparation of the dividend sheet due regard shall be had to the rank and privilege of every creditor, which rank and privilege, upon whatever they may legally be founded, shall not be disturbed by the provisions of this Act, but no dividend shall be allotted or paid to any creditor holding security from the estate of the insolvent for his claim, until the amount for which he shall rank as a creditor on the estate as to dividends therefrom, shall be established as hereinafter provided; and such amount shall be the amount which he shall be held to represent in voting at meetings of creditors, and in computing the proportion of creditors, whenever under this Act such proportion is required to be ascertained.

1.—IN THE DIVIDEND SHEET DUE REGARD SHALL BE HAD TO RANK AND PRIVILEGE OF EVERY CREDITOR.

Held in Montreal, that the privilege of the landlord on the proceeds of the effects found on the premises leased, has precedence over the privilege of the assignee and the insolvent for the costs of their respective discharge under the Act of 1864; and that the dividend sheet must be reformed accordingly. Morgan Ins. v. Whyte, and Biron contest. 13 L. C. Jur. 187.

2.—RANK AND PRIVILEGE OF EVERY CREDITOR.

See note to § 56 *ante*.

Seizure in execution after appointment of Assignee: its effect.

59. No lien or privilege upon either the personal or real estate of the Insolvent shall be created for the amount of any judgment debt, or of the interest thereon, by the issue or delivery to the Sheriff of any writ of execution, or by levying upon or seizing under such writ, the effects or estate of the Insolvent, if before the payment over to the plaintiff of the moneys actually levied under such writ, the estate of the debtor shall have been assigned to an Interim Assignee, or shall have been placed in compulsory liquidation under this Act; but this provision shall not affect any lien or privilege acquired before the passing of this Act or any privilege for costs which the plaintiff possesses under the law of the Province in which such writ shall have issued by reason of such issue, delivery, levy or seizure.

1.—SHALL NOT AFFECT ANY LIEN.

For instance, that of the landlord, on goods in premises leased, for payment of rent. See note on sec. 56. Or, that of the pledgee, for advances on goods in his possession, belonging to insolvent. See § 10 *ante*; or, that of the Common Carrier, &c.

2.—OR ANY PRIVILEGE FOR COSTS.

See secs. 66 and 74 *post*.

As to creditors holding security for their claims. Their right to Vote, etc.

60. If a creditor holds security from the Insolvent, or from his estate, or if there be more than one Insolvent liable as partners, and the creditor holds security from, or the liability of one of them, as security for a debt of the firm, he shall specify the nature and amount of such security or liability in his claim, and shall therein on his oath put a specified value thereon; and the assignee, under the authority of the creditors, may either consent to the right to rank for such liability, or to the retention of the property or effects constituting such security or on which it attaches, by the creditor, at such specified value, or he may require from such creditor an assignment of such liability, or an assignment and delivery of such security, property or effects, at an advance of ten per centum upon such specified value, to be paid by him out of the estate so soon as he has realized such security, in which he shall be bound to the exercise of ordinary diligence; and in either of such cases the difference between the value at which the liability or security is retained or assumed, and the amount of the claim of such creditor, shall be the amount for which he shall rank and vote as aforesaid; and if a creditor holds a claim based upon negotiable instruments upon which the Insolvent is only indirectly or secondarily liable, and which is not mature or exigible, such creditor shall be considered to hold security within the meaning of this section, and shall put a value on the liability of the party primarily liable thereon as being his security for the payment thereof; but after the maturity

of such liability and its non-payment he shall be entitled to amend his claim and treat such liability as unsecured.

1.—ASSIGNEE MAY REQUIRE ASSIGNMENT OF SECURITY, ETC.

This right does not exist in England; it prevails in Scotland; but there, twenty per cent, instead of ten, is added. Kinnear Bank. 83. In France, security cannot be demanded from the Assignee until after he has paid the debt. 3 Bedarride p. 2, *et seq.*

2.—UNDER THE AUTHORITY OF THE CREDITORS.

Or, by the authority of the Inspectors. See note on sec. 34 *ante*, and sec. 62 *post*, as to the power of the assignee to demand the assignment or retention of the security where the creditors and the inspectors, if any, fail to decide upon the course to be adopted.

If the security is on realty or shipping.

61. But if the security consists of a mortgage upon real estate, or upon ships or shipping, the property mortgaged shall only be assigned and delivered to the creditor, subject to all previous mortgages, hypothecs and liens thereon, holding rank and priority before his claim, and upon his assuming and binding himself to pay all such previous mortgages, hypothecs and liens, and upon his securing such previous charges upon the property mortgaged, in the same manner and to the same extent as the same were previously secured thereon; and thereafter the holders of such previous mortgages, hypothecs and liens shall have no further recourse or claim upon the estate of the Insolvent; and if there be mortgages, hypothecs, or liens thereon subsequent to those of such creditor, he shall only obtain the property by consent of the subsequently secured creditors; or upon their filing their claims specifying their security thereon as of no value, or upon paying them the value by them placed thereon; or upon giving security to the assignee that the estate shall not be troubled by reason thereof.

Proceedings on the filing of a secured claim.

62. Upon a secured claim being filed, with a valuation of the security, it shall be the duty of the Assignee to procure the authority of the inspectors or of the creditors at their first meeting thereafter, to consent to the retention of the security by the creditor, or to require from him an assignment and delivery thereof; and if any meeting of inspectors or of creditors takes place without deciding upon the course to be adopted in respect of such security the Assignee shall act in the premises according to his discretion and without delay.

Rank of several items of a Creditor's claim.
Supplementary oath of Creditor may be required.

63. The amount due to a creditor upon each separate item of his claim at the time of the execution of a deed of assignment, or of the issue of a writ of attachment, as the case may be, and which shall remain due at the time of proving such claim, shall form part of the amount for which he shall rank upon the estate of the insolvent, until such item of claim be paid in full, except in cases of deduction of the proceeds or of the value of security, as hereinbefore provided; but no claim or part of a claim shall be permitted to be ranked upon more than once, whether the claim so to rank be made by the same person or by different persons; and the Assignee may at any time require from any creditor a supplementary oath declaring what amount, if any, such creditor has received in payment of any item of the debt upon which his claim is founded, subsequent to the making of such claim, together with the particulars of such payment; and if any creditor refuses to produce or make such oath before the Assignee within a reasonable time after he has been required so to do, he shall not be collocated in the dividend sheet.

1.—THE AMOUNT DUE TO A CREDITOR, ETC., AT THE TIME OF THE ASSIGNMENT.

See Notes to sec. 56 *ante*.

2.—EXCEPT IN CASES OF DEDUCTION.

See secs. 60, 61, and 62 *ante*.

3.—BUT NO CLAIM, ETC., SHALL BE PERMITTED TO BE RANKED UPON MORE THAN ONCE.

That is to say, no claim which has drawn a dividend can be allowed to rank again for the same. For example, if the holder of a promissory note has received a dividend; the seller of the goods for which the note has been drawn, cannot prove from the same dividend on the merchandize thus sold; nor can an indorser, on a bill or note, after the holder.

Insolvent owing debts as members of co-partnership.

64. If the insolvent owes debts both individually and as a member of a co-partnership, or as a member of two different co-partnerships, the claims against him shall rank first upon the estate by which the debts they represent were contracted, and shall only rank upon the other after all the creditors of that other have been paid in full.

Allowance to Insolvent, how made, etc

65. The creditors, or the same proportion of them that may grant a discharge to the debtor under this Act, may allot to the Insolvent, by way of allowance, any sum of money, or any property they may think proper; and the allowance so made shall be inserted in the dividend sheet, and shall be subject to contestation like any other item of collocation therein, but only on the ground of fraud or deceit in procuring it, or of the absence of consent by a sufficient proportion of the creditors.

1.—THE CREDITORS, OR THE SAME PROPORTION, ETC.

In the absence of any such provision being made by the creditors, it may be assumed the Inspectors would have the power. The proportion of the creditors necessary is regulated in § 94, *post.*

As to costs in suits against Insolvent.

66. No costs incurred in suits against the insolvent after due notice of an assignment, or of the issue of a writ of attachment in compulsory liquidation has been given according to the provisions of this Act, shall rank upon the estate of the Insolvent; but all the taxable costs incurred in proceedings against him up to that time shall be added to the demand, for the recovery of which such proceedings were instituted; and shall rank upon the estate as if they formed part of the original debt.

1.—AFTER DUE NOTICE.

That is, by advertisement, according to § 3, *ante.*

Privilege of clerks, etc., for wages.

67. Clerks and other persons in the employ of the Insolvent in and about his business or trade shall be collocated in the dividend sheet by special privilege for any arrears of salary or wages due and unpaid to them at the time of the execution of a deed of assignment or of the issue of a writ of attachment under this Act, not exceeding four months of such arrears; but such privileged amount may be increased by order of the creditors.

1.—CLERKS AND OTHER PERSONS.

In England this privilege is not limited to yearly servants, though it must be continued and not a merely weekly hiring; therefore a coach-guard, and servants at a weekly salary, or weekly labourers, or workmen, were held not to be entitled to it. Arch. Bank. 134. There, it is also held, that the misconduct

of a clerk deprived him of the privilege. Exparte Hampson, 2 M. D. & D. 462: but otherwise where a clerk had involuntarily left the service several months before the bankruptcy. Exparte Saunders, 2 Mont. & A. 684.

2.—BY SPECIAL PRIVILEGE.

This expression confines the privilege to the proceeds of the personal property of the Insolvent, among, or upon which, such clerk or servant may have been engaged. For example, to that of the stock in trade, where the creditor is a clerk, or storeman; and to that of the household effects, where the claimant is a domestic servant. These rules will apply to the Province of Quebec. In the other Provinces a different interpretation may be given. See also secs. 58, 59, and 64 *ante*.

3.—ARREARS DUE AND UNPAID AT THE EXECUTION OF THE DEED OF ASSIGNMENT, ETC.

The engagement of all clerks and servants, ceases, from the execution of a deed of assignment, or the issue of a writ of attachment, by the mere operation of law. It is the same in England, Scotland, and France.

4.—NOT EXCEEDING FOUR MONTHS.

By the Act of 1864 the limit for payment in full of arrears, was three months; in Scotland it is for one month, and only in cases where the annual salary does not exceed £60 0 0; Kinnear, Bank. 143; in England it is three months, but the amount to be paid for such period, by the estate, must not exceed £30 0 0; Arch. Bank. 134; in France it is six months; Code Com. art. 549.

Notice of dividend sheet and payment.

68. So soon as a dividend sheet is prepared, notice thereof (Form M) shall be given by advertisement, and after the expiry of one judicial day from the day of the last publication of such advertisement, all dividends which have not been objected to within that period shall be paid.

This sec. is copied from sub. sec. 11 of sec. 5, Act. 1864.

1.—NOTICE THEREOF SHALL BE GIVEN.

Without notice by advertisement, according to the form prescribed, the dividend sheet is incomplete, and conveys no rights to any creditor. The Court may, on petition of a creditor, therefore prohibit payments being made thereon. Lariviere v. Whyte, & McEvila, XI L. C. Jur. 265.

2.—AFTER THE EXPIRY OF ONE JUDICIAL DAY.

The Act of 1864 gave a delay of six days, within which any claim in the dividend sheet might be contested.

The section says, "one *judicial* day," which is meant, a juridical, or one clear day; and neither a Sunday, holiday, or day for a general fast or thanksgiving.

This delay is imperative. See Lariviere v. Whyte & McEvila, XI L. C. Jur. 265, which may be regarded as applicable.

3.—ALL DIVIDENDS, ETC., SHALL BE PAID.

Held in Ontario, that an action may be brought against an assignee in insolvency for a dividend on a duly collocated claim which has not been objected to. Simpson v. Newton, L. J. for 1868, p. 46.

Debts of Insolvent for which claims are not filed.

69. If it appears to the Assignee on his examination of the books of the Insolvent, or otherwise, that the Insolvent has creditors who have not taken the proceedings requisite to entitle them to be collocated, it shall be his duty to reserve dividends for such creditors according to the nature of the claims, and to notify them of such reserve, which notification may be by letter through the post, addressed to such creditors' residence as nearly as the same can be ascertained by the Assignee; and if such creditors do not file their claims and apply for such dividends previous to the declaration of the last dividend of the estate, the dividends reserved for them shall form part of such last dividend.

Claims objected to, how determined.

70. If any claim be objected to at any time, or if any dividend be objected to within the said period of one day, and any dispute arises between the creditors of the Insolvent or between him and any creditor, as to the amount of the claim of any creditor, or as to the ranking or privilege of the claim of any creditor upon such dividend sheet, the Assignee shall proceed thereon as hereinafter provided, shall hear and examine the parties and their witnesses under oath (which oath the Assignee is hereby empowered to administer), shall take clear notes in writing of the parol evidence adduced before him, shall examine and verify the statements submitted to him, by the books and accounts of the Insolvent, and by such evidence, vouchers and statements as may be furnished to him, and shall make an award in the premises, and as to the costs of such contestation, which award shall be deposited in the Court, and shall be final, unless appealed from within three days from the date of its communication to the parties to the dispute.

1.—WITHIN THE PERIOD OF ONE DAY.

That is, of one day from the day of the last publication of the preparation of the dividend sheet. See § 68 *ante*.

2.—UNLESS APPEALED FROM WITHIN THREE DAYS.

This delay is imperative. So also, whether the objection be to the entire dividend sheet, or to a special claim therein. Lariviere v. Whyte, & McEvila, XI L. C. Jur. 265.

The assignee should send a copy of the award to each litigant, because, by sec. 82, an appeal may be taken at any time within three days from the time of the receipt thereof by any party interested.

Notice to be given of objections.
Award, how made.

71. The Assignee shall not receive or notice any objection to any claim, dividend or collocation, unless such objection

shall be filed before him in writing, stating distinctly the grounds of such objection, together with evidence of the previous service of a copy thereof on the claimant; and the claimant shall have three days thereafter to answer the same, which time, however, may be enlarged by the Assignee, with a like delay to the contestant to reply; and upon the completion of an issue upon such objection the Assignee shall fix a day for proceeding to take evidence thereon, and shall thereafter proceed therewith from day to day, unless he shall otherwise order, until the making of his award in the premises.

1.—UNLESS SUCH OBJECTION SHALL BE IN WRITING.

The contestation, and other pleadings, should meet the requirement for all legal documents:—namely, a specification of time, place, person, and circumstance. These may be described in plain and concise language. Sec. 131 *post*. And no evidence can be received upon any fact not so set forth. *Ibid.*

As the papers, and the award, may be carried to the Court, in appeal, it would appear necessary that counsel should be engaged by the claimants and contestants in the proceedings before the assignee.

2.—THE ASSIGNEE SHALL, ETC., TAKE EVIDENCE THEREON.

He will take evidence according to the rules prevailing in the Province where the proceedings are taken. It must be in writing. See *ante* § 70.

The rules of evidence, in the various Provinces, which would regulate such cases, are presumed to be in accord with the following English rules:—

1. That the evidence must correspond to, and be limited by, the allegations in issue;

2. That the best evidence, of which the case in its nature is susceptible, must be produced; and secondary evidence is inadmissable until proof is made that the best evidence cannot be adduced;

3. That the burden of proving a fact is upon him who affirms it;

4. That the party upon whom is the burthen of proof, shall begin;

5. That he who begins shall have the right to adduce evidence in rebuttal; but such evidence shall be limited to rebut the evidence of his opponent;

6. In the Province of Quebec, the parties to a contestation may examine each other, and while the testimony given by such party cannot make evidence for himself, his answers cannot be divided. Thus, if he should answer, that he did owe a claim, but had paid it, such answer must be accepted or rejected in its entirety. In the other Provinces, the rules there prevailing regarding the examination of parties to a suit, must guide the assignee acting therein;

7. In the examination of a witness in chief, leading questions are not usually permissible; but may be, on cross-examination.

In questions raised by Counsel as to the admissibility of evidence which the assignee may feel himself unable to decide, it may be proper for him to accept such evidence, and note the objections, so that if it be legal, it may be available; and if not, the objector may be thus enabled to have it rejected in appeal.

Inspectors may order Contestation of Claims.

72. It shall be the duty of the inspectors and of the Assignee under their direction to examine the claims filed before the Assignee, and to obtain information as to their correctness, and when they consider it expedient that any claim, dividend or collocation be contested, they may order the contestation thereof at the expense of the estate; and such contestation may be made in their names or in the names of any creditor consenting thereto.

As to Costs awarded by Assignee.

73. The award of the Assignee as to costs may be made executory by execution in the same manner as an ordinary judgment of the Court, by means of an order of the Judge, obtained upon the application of the party to whom costs are awarded, made after notice to the opposite party; and the creditors may by resolution authorize and direct the costs of the contestation of any claim or any dividend to be paid out of the estate, and may make such order either before, pending or after any such contestation.

If there be property under seizure at commencement of proceedings.

74. If at the time of the issue of a Writ of Attachment, or the execution of a Deed of Assignment, any immoveable property or real estate of the Insolvent be under seizure, or in process of sale, under any writ of execution or other order of any competent Court, such sale shall be proceeded with by the officer charged with the same, unless stayed by order of the Judge upon application by the guardian, Interim Assignee or Assignee, upon special cause shewn, and after notice to the plaintiff; reserving to the party prosecuting the sale his privileged claim on the proceeds of any subsequent sale, for such costs as he would have been entitled to be paid by privilege out of the proceeds of the sale of such property, if made under such writ or order; but if such sale be proceeded with, the moneys levied therefrom shall be paid over to the Assignee for distribution, according to the rank and priority of the claimants thereon, and the officer charged with the execution shall make his return of such moneys to the Assignee and pay them over to him, and his return to the Court from which the writ issued, declaring that he has done so, shall be a valid and sufficient return upon such writ in so far as regards the moneys so paid over.

This sec. is not to be found in the Act of 1864; it is partly derived from the 12th sec. of the Amendment Act, 29 Vic. c. 18.

1.—OR, IN PROCESS OF SALE.

Therefore, if a writ of attachment issues, or a deed of assignment be made, *after* the sale, the proceeds would pass into the hands of the Sheriff, to be by him disposed of as if no assignment had been made, or writ of attachment issued. In the Amendment Act, it is provided that the assignment, &c., shall be held to convey all the assets of the insolvent, &c., "so long as they are not actually sold by the Sheriff, &c." The legal effect of both sections, in this respect, would appear to be the same.

On this sec. of the Amendment Act two decisions are reported of the Courts of Ontario, in accord with the above interpretation of this sec. under review. The first is that of Yale v. Tollerton. In this case, previous to an act of insolvency, certain lands in which the insolvent, a defendant in a suit in chancery, had an equitable interest, had been ordered to be sold, and were afterwards sold, and the purchase money paid to the plaintiff in equity; the Assignee in insolvency moved that such moneys be paid into Court for the benefit of general creditors. The motion was refused. 2 Chancy. Rep. 49.

The second case is that of Brand v. Bickell, wherein it was held, that when a sale had been had under an execution against the judgment debtor, who afterwards makes an assignment, the proceeds of the sale is not vested in the assignees, but go to the judgment creditor. Law Jur. for 1868, p. 95.

Dividends unclaimed, how dealt with.

75. All dividends remaining unclaimed at the time of the discharge of the Assignee shall be left in the bank where they are deposited, for three years, and if still unclaimed, shall then be paid over by such bank with the interest accrued thereon, to the Government of Canada, and if afterwards duly claimed shall be paid over to the persons entitled thereto, with interest at the rate of four per centum per annum from the time of the reception thereof by the Government.

1.—AT THE TIME OF THE DISCHARGE OF THE ASSIGNEE.

That is, the discharge of the Court, as provided in sec. 54 *ante*.

Balance payable to Insolvent.

76. If any balance remains of the estate of the Insolvent or of the proceeds thereof, after the payment in full of all debts due by the Insolvent, such balance shall be paid over to the Insolvent upon his petition to that effect, duly notified to the creditors by advertisement and granted by the Judge.

1.—AFTER PAYMENT IN FULL.

These words would imply payment both of the principal and interest, where the debt by the contract, or by statutory enactment, carries interest. Payment, "in full," could not be otherwise strictly made. In England, such would be the ruling where the estate realized sufficient to pay principal and legal or contractual interest. *Re* Langstaffe, 2 Grant, 165.

OF LEASES.

Lease more valuable than the rent to be sold: and subject to what conditions.

77. If the Insolvent holds under a lease, property having a value above and beyond the amount of any rent payable under such lease, the Assignee shall make a report thereon to the Judge, containing his estimate of the value of the estate of the leased property in excess of the rent; and thereupon the Judge may order the rights of the Insolvent in such leased premises to be sold, after such notice of such sale as he shall see fit to order; and at the time and place appointed such lease shall be sold, upon such conditions as to the giving of security to the lessor, as the Judge may order; and such sale shall be so made subject to the payment of the rent and to all the covenants and conditions contained in the lease, and all such covenants and conditions shall be binding upon the lessor and upon the purchaser, as if the purchaser had been himself lessee and a party with the lessor to the lease.

Copied from sec. 6, Act of 1864.

1.—THE JUDGE MAY ORDER.

The power is optional. He will order the sale if he should be of opinion that the excess of value over rent is sufficient to render it probable that a profit may be realized.

2.—GIVING SECURITY TO THE LESSOR.

It would be unjust to the lessor to compel his acceptance of a tenant unable to afford him sufficient, or less security for his

rent, than he previously possessed. Therefore the law provides, that the sale shall be made, upon such security to the lessor, as the Judge may order. The security would mean a sufficiency of furniture or stock to furnish the premises; or, lacking these, such other, as may be satisfactory, to the Judge.

Other cases of lease, how dealt with.

78. If the Insolvent holds under a lease extending beyond the year current under its terms at the time of his insolvency, property which is not subject to the provisions of the last preceding section, or respecting which the Judge does not make an order of sale, as therein provided, or which is not sold under such order, the creditors shall decide at any meeting which may be held more than one month before the termination of the yearly term of the lease current at the time of such meeting, whether the property so leased should be retained for the use of the estate, only up to the end of the then current yearly term, or, if the conditions of the lease permit of further extension, also up to the end of the next following yearly term thereof, and their decision shall be final.

1.—A LEASE, ETC., BEYOND THE YEAR CURRENT UNDER ITS TERM.

This implies the current year of the lease, not the current year of the calendar.

2.—AT ANY MEETING WHICH MAY BE HELD MORE THAN ONE MONTH.

The Act of 1864 required that the meeting to decide whether the lease should be retained or not, should be held more than three months before the expiry of the yearly term. A notice of one month may, in some cases, be found insufficient to enable the landlord to procure another tenant, and an injustice would be thereby done him. The creditors may, of course, come to a decision at an earlier period whenever practicable.

If the lessor claims damages for receiving any property before the end of the lease.

79. From and after the time fixed for the retention of the leased property for the use of the estate, the lease shall be cancelled and shall from thenceforth be inoperative and null; and so soon as the resolution of the creditors as to such retention has been passed, such resolution shall be notified to the lessor, and if he contends that he will sustain any damage by the termination of the lease under such decision, he may make a claim for such damage, specifying the amount thereof under oath, in the same manner as in ordinary claims upon the estate, and the Assignee shall proceed forthwith to make an award upon such claim, in the same manner, and after similar investigation and with the same right of appeal, as is herein provided for in case of claims or dividends objected to.

1.—THE ASSIGNEE SHALL FORTHWITH MAKE AN AWARD.

If the claim for damages be excessive, it may be contested. If not, the assignee may make his award thereon, without contestation, but subject to the approval of the creditors, or the inspectors. Vide § 72 *ante*.

How such damage shall be estimated.

80. In making such claim, and in any award thereupon, the measure of damages shall be the difference between the value of the premises leased when the lease terminates under the resolution of the creditors, and the rent which the Insolvent had agreed by the lease to pay during its continuance; and the chance of leasing or not leasing the premises again, for a like rent, shall not enter into the computation of such damages; and if damages are finally awarded to the lessor he shall rank for the amount upon the estate as an ordinary creditor.

1.—THE MEASURE OF DAMAGES.

If there be goods sufficient in the premises at the time of the assignment, &c., to pay for the rent due and payable by privilege, it must be paid in full; so likewise, if the premises be retained, at the will of the creditors. Otherwise, the landlord will rank on the estate as an ordinary creditor. As to the period when rent is payable by privilege, see note to § 56 *ante*.

Preferential claim of Landlord limited.

81. The preferential lien of the landlord for rent in the Provinces of Ontario, New Brunswick or Nova Scotia is restricted to the arrears of rent due during the period of one year last previous to the execution of a deed of assignment, or the issue of a Writ of Attachment under this Act, as the case may be, and from thence so long as the Assignee shall retain the premises leased.

OF APPEAL.

Appeal to the Judge from award of Assignee, and proceedings consequent upon it.

82. There shall be an appeal to the Judge from the award of an Assignee made under this Act, which appeal shall be by summary application, of which notice shall be given to the opposite party and to the Assignee, within three days from the day on which the award is notified to the party complaining of it, and which shall be presented forthwith after the expiration of the delay required for notice of presentation; and the Assignee shall attend before the Judge at the time and place indicated in such notice, and shall produce before him all evidence, notes of evidence, books, or proved extracts from books, documents, vouchers, and papers having reference to the matter in dispute; and thereupon the Judge may confirm such award, or modify it, or refer it back to the Assignee for the taking of evidence, by such order as will satisfy the ends of justice; and, pending any appeal, the Assignee shall reserve a dividend equal to the amount of the dividend claimed.

1.—SUMMARY APPLICATION.

By petition, or motion.

2.—WITHIN THREE DAYS.

That is to say, three juridical days.

3.—THEREUPON THE JUDGE MAY CONFIRM THE AWARD.

After hearing the parties.

Appeal from order of Judge.
Judge may refer it to the full Court.

83. If any of the parties to any appeal, contestation, matter or thing upon which a Judge has made any final order or judgment, are dissatisfied with such order or judgment, they may in the Province of Quebec move to revise the same or any appeal therefrom in like manner as from any final judgment of the Superior Court, to the Court of Queen's Bench on the appeal side thereof; in the Province of Ontario they may appeal therefrom to either of the Superior Courts of Common Law or to the Court of Chancery, or to any one of the Judges of the said Courts; in the Province of New Brunswick to the Supreme Court of New Brunswick or to any one of the Judges of the said Court; and in the Province of Nova Scotia to the Supreme Court of Nova Scotia or to any one of the Judges of the said Court; but any appeal to a single Judge in the Provinces of Ontario, New Brunswick or Nova Scotia may, in his discretion, be referred on a special case to be settled, to the full Court, and on such terms in the meantime as he may think necessary and just.

1.—IN THE PROVINCE OF QUEBEC, MOVE TO REVISE.

That is to say, in Quebec the parties may carry the case to the Court of Review, before taking it to the Court of Queen's Bench.

Conditions of appeal.
Security.

84. Such appeal shall not be permitted, unless within five days from the day on which the order, or judgment is rendered, or on which, in the the Province of Quebec the delay for moving to revise the same expires, if no motion in revision be made, the party desiring to appeal causes to

be served upon the opposite party and upon the Assignee, an application in appeal, setting forth the proceeding before the Judge, and his decision thereon, and praying for its revision, with a notice of the day on which such application is to be presented, and also within the said period of five days causes security to be given before the Judge by two sufficient sureties, that he will duly prosecute such appeal, and pay all costs incurred by reason thereof by the respondent.

1.—AN APPLICATION IN APPEAL.

By petition or motion, according to the forms prevailing in the Province where the proceedings may be taken.

Costs on Appellant not proceeding according to his petition.

85. If the party appellant does not present his application on the day fixed for that purpose, the Court or Judge selected to be appealed to, as the case may be, shall order the record to be returned to the person or officer entitled to the custody thereof, and the party respondent may, on the following or any other day during the same term, produce before the Court, or within six days thereafter before the Judge, the copy of application served upon him, and obtain costs thereon against the appellant.

OF FRAUDS AND FRAUDULENT PREFERENCES.

Gratuitous contracts made within three months of insolvency presumed fraudulent and void.

86. All gratuitous contracts or conveyances, or contracts or conveyance without consideration, or with a merely nominal consideration, respecting either real or personal estate made by a debtor afterwards becoming an Insolvent with or or to any person whomsoever, whether such person be his creditor or not, within three months next preceeding the date of the Assignment, or of the issue of the Writ of Attachment in compulsory liquidation, and all contracts by which creditors are injured, obstructed, or delayed, made by a debtor unable to meet his engagements, and afterwards becoming an Insolvent, with a person knowing such inability or having probable cause for believing such inability to exist, or after such inability is public and notorious, whether such person be his creditor or not, are presumed to be made with intent to defraud his creditors.

1.—ALL GRATUITOUS CONTRACTS.

In all civilized countries a creditor has a right so annul gratuitous and fraudulent contracts, affecting his interests.

Under the Civil law, in Rome, this action existed, by the name of *act. pauliene.* "*Ait ergo prætor, quæ fraudationis causâ gesta* "*erunt. Hæc verba sunt generalia et continent in se omnem omnino* "*in fraudem factam vel alienationem, vel quem cumque contractum.*" *L.* 1 § 2 *ff. que in fraud. credi.* The code and digest have each a title upon the development of this action.

In France, anterior to the Code Napoleon (Ord. 1673, tit. 11, art. 4) all donations, transfers, and sales, of real or personal

property, made in fraud of creditors, were null, without reference as to the time when such transactions may have taken place. In 1702, a declaration was made, to the effect, that if the transaction was made within ten days of the failure, no proof of fraud was necessary to annul it; beyond that period, it might be annulled on proof of fraudulent intent.

By the Code de Commerce all donations, transfers, and payments of immature debts, ten days, anterior to the insolvency, were absolutely null; and by the new code of May, 1838, all these transactions were declared absolutely null if made within ten days next before the time established by the Court as that of the stoppage of payment. Namur Droit. Comm. § 149, p. 446. And all other transactions made after such stoppage, were annullable if the party contracting with the debtor knew of such stoppage.

In Holland we think a wiser discrimination is exercised in such cases. There, all donations are void, when made within six days of declaration of insolvency by the debtor, or, of the fyling of the petition by the creditors for compulsory liquidation; or within one hundred and twenty days, if made with a relative within the fourth degree; and all payments of immature debts, and all hypothecs, and security given for debts, are void, if made within forty days of any of the above acts of insolvency. Levesque, Faillites et Banqueroutes, No. 512.

In Scotland the rule is similar to that prevailing in the Civil law and in France. Kinnear, Bank. 133 *et seq.*

In England, all such acts of the debtor are declared null, when made "in contemplation of bankruptcy." Doria & Macrae, Bank. 138. This expression is not limited to mean contemplation of a commission of bankruptcy; it is enough, if he knew, or should be supposed to anticipate that bankruptcy would, in all human probability, follow, though not immediately. Gibbons v. Phillips, 7 B. & C. 529. The principle of the bankrupt law there is identical with that of our own, namely, the equal distribution of the property and effects of the debtor. All acts done with the object of preventing that distribution are therefore reputed fraudulent. Kerr, Fraud, 219.

The decisions of English courts upon frauds and fraudulent conveyances, and which are applicable, or nearly so, to the provisions of this act, will be found collated in Doria & Macrae, Bank. 136 *et seq.*, Arch. Bank. 54 *et seq.*, James, Bank. Law, U. S. 1867, 236. Among the French authorities bearing on this question, are: Chardon, du Dol. chap. 2, No. 193 *et seq.*; Bedarride, Faillites et Banq.; 2 Namur, Droit Comml. Liv. 3, tit. 1, § 149 *et seq.*; 3 Nouv. Denisart, vo. Fraude aux Creanciers, § 1, No. 10; Pothier, Ob. Part 1, chap. 2, art. 2, No. 153; 6 Toullier, Nos. 353 *et seq.*

2.—OR, CONTRACTS OR CONVEYANCES, . . . CONSIDERATION. WITH MERELY A NOMINAL

The question as to what constitutes a "nominal consi... must be decided by the circumstances of each case. There a... occasions when merchants may sell a certain class of articles at a nominal price, for the purpose of promoting the sale of other goods in their possession, or to procure money for the purchase of other goods, and realizing by the profit or the sale of the latter more than the loss on the former. It is not to be presumed that if a debtor should fail to realize this expectation, a purchaser, in good faith, should be compelled to restore what he may have purchased under such circumstances. In England it is held, that "if a trader sells goods at less price than they are worth, "and make a practice of it, though it is obvious that such prac- "tice must ultimately end in bankruptcy, no such sale, *quâ* sale, "will constitute an act of bankruptcy; and even where the "trader intended in a particular sale to run away with the fruits "and cheat his creditors, such sale is not an act of bankruptcy. "But if the purchaser be privy to that intention, it would be a "fraudulent transfer, within the statute." Doria & Macrae, 153, Kerr, Fraud, 222. A sale of goods, "considerably less than their market value," is not *per se* a fraudulent transfer, unless it be shewn to be with intent to delay or defeat creditors. Lee v. Hart, 10 Exch. Rep. 555.

In France, and in Quebec, the right has existed—taken from the civil law—to annul a sale of real estate, if the price given was less than half its value. The inequality was deemed *lœsio*, and relief was afforded. But in the former country this privilege has been restricted (Code Nap. 1313); and in the latter it has been recently limited to minors, and majors can no longer annul a contract for cause of lesion only Civ. Code L. C. art. 1012. It may be thus argued, that courts will interpret the words "merely nominal consideration," to mean a price so far below the actual value of the goods sold, as to appear a cloak to hide a gift, or fraud. If the purchaser be a creditor or a relative, there would be then an appearance of fraud, which would warrant a stricter application of the statute.

3.—BY WHICH CREDITORS ARE INJURED, OBSTRUCTED, OR DELAYED.

See notes on sec. 88 *post*.

4.—WITH A PERSON KNOWING SUCH INABILITY, ETC., OR, AFTER SUCH INABILITY IS PUBLIC.

This accords with the law of France. II Chardon du Dol, n. 206 *et seq.*; Nouv. Den. vo. Fraude, Nos. 12 & 15; 3 Bed. du Dol, Nos. 1432 & 1439.

5.—ARE PRESUMED TO BE MADE WITH INTENT.

The effect of this presumption is of course to annul all transactions conflicting with this section.

Certain others voidable.

87. A contract or conveyance for consideration, respecting either real or personal estate, by which creditors are injured or obstructed, made by a debtor unable to meet his engagements with a person ignorant of such inability, whether such person be his creditor or not, and before such inability has become public and notorious, but within thirty days next before the execution of a deed of assignment or of the issue of a Writ of Attachment under this Act, is voidable, and may be set aside by any Court of competent jurisdiction, upon such terms as to the protection of such person from actual loss or liability by reason of such contract, as the Court may order.

1.—BY WHICH CREDITORS ARE INJURED OR OBSTRUCTED.

See note on § 88 *post.* See Warren & Shaw, and Whitney contest., Sup. Court, Mont. Octr. 1869.

2.—WITH A PERSON IGNORANT OF SUCH INABILITY.

In consideration of the apparent good faith of the purchaser, through the payment of consideration and ignorance of the debtor's condition, the contracts specified in this section are not *ipse jure* void, but voidable only by the insolvency of the latter within thirty days of the transaction, and the date of the assignment, &c., and may be rescinded only upon such terms as will protect him from loss.

In Ontario it has been held, under the Act of 1864, which contained provisions identical to those in the present act, respecting fraudulent preferences, that though a person who transacts with the debtor may have apprehended the early insolvency of the latter, a mortgage given under such circumstance, for money lent, to enable the debtor to carry on his business, and to pay his liabilities in full, should be held valid as against the official assignee. Newton v. Ontario Bank, 15 Chy. Rep. 283.

3.—TO THE PROTECTION OF SUCH PARTY FROM ACTUAL LOSS.

In such cases, the Court would probably order the repayment of the price, and any necessary additional cost to which the purchaser, in good faith, may have been subjected. But no compensation for damage or loss of profit.

All contracts made with intent to impede or defraud Creditors, with the knowledge of party contracting, to be void.

88. All contracts, or conveyances made and acts done by a debtor, respecting either real or personal estate, with intent fraudulently to impede, obstruct or delay his creditors in their remedies against him, or with intent to defraud his creditors, or any of them, and so made, done and intended with the knowledge of the person contracting or acting with the debtor, whether such person be his creditor or not, and which have the effect of impeding, obstructing or delaying the creditors of their remedies, or of injuring them or any of them, are prohibited and are null and void, notwithstanding that such contracts, conveyances, or acts be in consideration or in contemplation of marriage.

1.—WITH INTENT FRAUDULENTLY TO IMPEDE, OBSTRUCT, OR DELAY.

The interpretation given to these words, and their equivalents, in the English courts, may be gathered from the following illustrations:—Any conveyance which has the effect of defeating or delaying creditors, no matter what the motive may be, for such conveyance must be taken to have been made with such intent, is therefore fraudulent. Stewart v. Moody, 1 C. M. & R. 777; Graham v. Chapman, 12 C. B. Rep. 85, as for instance a conveyance of a debtor's stock to secure an antecedent debt, or previous advances, even though the expectation of a further advance may have been the cause of the transfer. *Ibid.* The reason is, that the debtor gets no equivalent for the stock. Lindon v. Sharp, 7 Scott N. R. 745; Oriental Bank v. Coleman, 4 L. T. Rep. N. S. 9. The creditors are fraudulently delayed and impeded when the contract or conveyance prevents the continuance of trade by the debtor. Exparte Bailey, Doria & Macrae, 139. What grant or conveyance

by a debt[illegible] will *not* disable him from trading, but may still be [illegible]ded as an act of bankruptcy, must be determined by the particular circumstance of each case. Young v. Wand, 8 Exch. Rep. 221. On the other hand, many grants and conveyances, made by a trader for the satisfaction of part of his debts, are valid even though a preference be consequently obtained, provided they are made to preserve his credit, and not with a view to give a preference where credit can be no longer preserved. Harman v. Fletcher Cowp. 117; Compton v. Bedford, 1 W. Bl. Rep. 322; Doria & Macrae, Bank. 146. For the French authorities on this point, see note to § 86, and Ord. 1673, tit. 11, art. 4; Declaration de 1702.

2.—WITH THE KNOWLEDGE OF THE PERSON CONTRACTING.

If the person with whom the debtor contracts, be ignorant of his financial condition, the contract or conveyance will be valid, if made upon a consideration, or, if the insolvency be not notorious. Bedarride, du Dol, No. 1432. Jousse, Ord. 1673, tit. 11, art. 4; and § 86 *ante*.

In Ontario it is held that actual knowledge, not mere constructive notice, is necessary to vitiate under this clause. Leys & wife v. McPherson, 17 C. P. Rep. 266. This sec. is copied from sub. sec. 3, of sec. 8 of the Act of 1864. Under that, the case of Davis & al. v. Muir, and Chamberlin contesting, has been recently decided in the Superior Court at Montreal. It is of sufficient interest to be reproduced somewhat fully.

About the month of June, 1867, the Insolvents, Davis, Welsh & Co. obtained from James Muir his accommodation notes in their favor, for $12,000.00.

About the 10th January, 1868, James Muir, hearing that they had suspended payment, obtained their notes, and caused them to be ante-dated, and made to correspond, as regards the dates and amounts, to the accommodation notes. Davis, Welsh & Co. made an assignment under the Act about ten days after.

One of these notes was then transferred by him, but without recourse, to the claimant, E. Muir, a creditor, of James Muir, who took it as a security for an antecedent debt, but before its apparent maturity, and without any positive knowledge of the foregoing details.

Shortly after this transfer by James Muir to E. Muir, the former also became insolvent. Under these circumstances E. Muir, as the holder of the note, being, as stated, one of those got by James Muir, from the D. W. & Co. in January, 1868, and holding it as collateral security, without recourse (*sans recours*), did not rank on James Muir's estate, but claimed on the estate of the insolvents as the makers. Their right thus to rank was contested, on the ground, chiefly,—1st, that the note was given in violation of this

sec. of the Act of 1864, and was therefore absolutely void, *ab initio*, even if E. Muir were a *bona fide* holder for value before maturity; and 2ndly, on the ground that E. Muir having taken it for an antecedent debt, without incurring any new obligation on the strength of it, was not in fact a holder for value as against D. W. & Co.'s creditors.

The Assignee to the estate sustained the contestation on both these grounds, and on appeal to the Superior Court, Torrance. J., confirmed the judgment, resting his decision on the first ground, as alone sufficient without adverting to any other. He held it was an attempt to create a security upon the estate of persons at the time insolvent, and that the prohibition pronounced was an absolute prohibition, which rendered null the note in no matter whose hands it was.

It is thus decided that a promissory note, given in violation of this sec. of the Act, is absolutely null, *ab initio*, even in the hands of a third party, an innocent holder before maturity. See 13 L. C. Jur. 184.*

Fraudulent Preferential Sales, etc., to be void.

And presumed fraudulent, if made within a certain time before assignment, etc.

89. If any sale, deposit, pledge, or transfer be made of any property real or personal by any person in contemplation of insolvency, by way of security for payment to any creditor, or if any property real or personal, moveable or immoveable, goods, effects, or valuable security, be given by way of payment by such person to any creditor, whereby such creditor obtains or will obtain an unjust preference over the other creditors, such sale, deposit, pledge, transfer, or payment shall be null and void, and the subject thereof may

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* The authorities cited from Doria & Macrae in the report of the case in the Jurist shew that the English Courts uniformly held that a note given in violation of a prohibitory statute of similar wording with the above sec. was absolutely null and void *ab initio*, even in the hands of a *bona fide* holder, for value *before maturity;* and that to protect such holder it was necessary for the legislature to add a saving clause. The matter is well stated in D. & M., Bank. 742.

The writer is indebted for the report of this case to Mr. N. W. Trenholme, one of the Counsel, engaged therein. The differences between it, and that in the L. C. Jurist, were made by Mr. Trenholme, in the view of bringing out the legal points involved, somewhat more prominently.

be recovered back for the benefit of the estate by the Assignee, in any Court of competent jurisdiction; and if the same be made within thirty days next before the execution of a deed of assignment, or the issue of a Writ of Attachment under this Act, it shall be presumed to have been so made in contemplation of insolvency.

1.—IN CONTEMPLATION OF INSOLVENCY.

This phrase is taken from the English Courts, and we cannot therefore do better than copy a few of their decisions on its legal meaning, which are collated in Doria & Macrae, Bank. 147, *et seq.*

"Contemplation of insolvency does not mean contemplation of "the issue of a writ, it was enough if a party knew himself to be "in such a situation, that he must be supposed to anticipate that "bankruptcy would in all human probability follow though not "immediately. Gibbons v. Phillips, 7 B. & C. 529." Wilde C. J. in construing this term, expressed his opinion, "that if a pay-"ment were made at a time when the bankrupts had a view to "bankruptcy, though they might hope to avoid bankruptcy, yet, "made with the object of giving the creditor an eventual advan-"tage if the bankruptcy did take place, the payment was illegal "and invalid." Brown v. Kimpton, 13 L. T. Rep. 11.

By our law, *payment* made within thirty days before assignment to a creditor, ignorant and having no probable cause of knowing of the insolvent's inability to meet his enagagements (§ 90 *post*), is not invalid; but nevertheless, these English decisions are applicable to illustrate the legal effect of the words "contemplation of insolvency," upon the transactions specified in the sec. under review.

The object of these decisions is to prevent undue preference, and to have the bankrupt's assets equally apportioned among all his creditors. Doria & Macrae, Bank. 151.

In cases of insolvency, this doctrine has been held in the courts of Quebec, anterior to the existence of the Insolvent law; and it has always existed and still exists in France. Jousse Com. on Ord. of 1673; Rep. de Guyot vo. Déconfiture, p. 299; Bryson v. Dickson, 3 L. C. Rep. 65; Sharing v. Meunier, 7 L. C.. Rep. 250; Cumming v. Mann, 2 L. C. Jur. 195; Cumming v. Smith. 5 L. C. Jur. 1; Withall & Young & Michon, 10 L. C. Rep. 149; Civ. Code L. C. Ob. Nos. 51 to 60.

To these cases may be added another not yet reported in the books, recently decided in the Court of Queen's Bench (in appeal) in Montreal, in Septr. 1869,—The Royal Canadian Bank v. Whyte.

This bank had discounted paper for one Middleton, for more

than $8,000.00. A part of this amount ($4,500) was represented by Middleton's acceptance, which had been protested on the 15th June, 1867. On the same date various notes of his, discounted by the bank, fell due, and he was unable to pay them. He then, by a warehouse receipt, transferred to the bank, in part settlement of his acceptance, a quantity of coal, valued at $3,000. In the following month of August he absconded, and a writ of attachment was accordingly issued, and the estate placed in the hands of Whyte, the respondent, as the official assignee. During this period the coal remained in Middleton's yard, and upon the issue of the writ, the bank claimed the coals by a writ of revendication. The assignee contested the claim on the ground that the transfer of the coals was given in contemplation of insolvency, whereby the bank might obtain an unjust preference; that Middleton was insolvent at the time of the transfer, and the bank must be presumed to have been also then aware of it. These views were taken by the Superior Court, and the bank thereupon carried it to appeal, where the judgment was confirmed.

Badgely J. in rendering judgment, in appeal, observed: "There "was certainly a fraudulent preference in this case. It arises, "when a trader knowing himself to be insolvent, or even likely "to become so, makes a delivery of property, not in the ordinary "course of his business, to a creditor for an antecedent debt."

This rule of law must not be supposed to extend to cases where security may be given, in good faith, and not in contemplation of insolvency, for an equivalent consideration. Doria & Macrae, 152. Thus a bill of sale given to secure an advance made on the faith of the security, to enable a trader to carry on his business, is not an act of bankruptcy, although it would, if the security were either wholly or partly an antecedent debt contracted without security. Doria & Macrae, 150.

It has been held in Ontario, that a chattel mortgage given within thirty days of insolvency, by Mathers, a trader, on all his stock in trade, to one Lynch, in consideration of the latter indorsing notes, to enable the former to purchase goods to carry on his business, was not a fraudulent preference, under that section of the Act of 1864, from which the sec. under review is copied, although its effect might be to delay the creditors; because Lynch had been ignorant of the position of Mathers, and became a creditor by this transaction only, and obtained no security for any pre-existing claim. But although not absolutely void, under this section, the court remarked it might be *voidable* under a sec. identical to sec. 87 of the Act of 1869. 27 Q. B. Rep. 244.

A somewhat similar decision was given in Montreal, in Warren & Shaw, & Warner contest. Vide 12 L. C. Jur. 309.

As regards ordinary creditors, their ignorance of the debtor's inability to pay his debts, will not, under this sec., validate a transfer. It is the policy of the law to distribute the insolvent's

effects rateably among the creditors. Adams v. McCall, 25 Q. B. Rep. 219 (Ontario). But to avoid a transaction under this sec. there must be a contemplation of insolvency, coupled with a fraudulent preference. McWhirter v. Thorne, C. P. Rep. (Ontario), 302.

2.—IF MADE WITHIN THIRTY DAYS.

If these transactions are made "within thirty days" of the assignment or the issue of a writ, this clause says they shall then be presumed to have been made in contemplation of insolvency. The presumption does not exist, if made before. In such cases, therefore, the existence of this "contemplation" must be proved by the contestant.

Payments made under certain circumstances by a debtor to be void.

90. Every payment made within thirty days next before the execution of a deed of assignment, or the issue of a Writ of Attachment under this Act, by a debtor unable to meet his engagements in full, to a person knowing such inability, or having probable cause for believing the same to exist, is void, and the amount paid may be recovered back by suit in any competent Court, for the benefit of the estate; Provided always that if any valuable security be given up in consideration of such payment, such security or the value thereof shall be restored to the creditor before the return of such payment can be demanded.

1.—EVERY PAYMENT.

The preceding sec. referred to payment by merchandise, securities, or real estate. This sec. refers to payment in money. Any payment made previous to thirty days appears to be unaffected by the statute.

2.—TO A PERSON KNOWING SUCH INABILITY, OR, HAVING PROBABLE CAUSE FOR BELIEVING THE SAME TO EXIST.

The two following cases were decided in the courts of Ontario, partly on that sec. of the Act of 1864 which corresponds to this sec.

A payment made by an Insolvent after the issue of the writ of attachment against him, is recoverable back by the assignee, though the defendants were ignorant of the insolvency when they received the money from the insolvent. Roe v. Royal Canadian Bank, 19 C. P. Rep. 347.

Previous to an act of insolvency, certain lands in which the insolvent, a defendant in a suit in chancery, had an equitable interest, had been ordered to be sold, and were afterwards sold, and the purchase money paid to the plaintiff in equity: the assignee in insolvency moved that such moneys be paid into court for the benefit of general creditors. It was held that the lands were subject to the order for sale; and the motion refused. Yale v. Tollerton, Chancy. Cham. Rep. 49.

For the English rules on the subject of protection of payments by and to the bankrupt, see Doria & Macrae, 456 *et seq.* Archbold, Bank. 348. But in the application of them to this statute as to payments, it must be borne in mind, that in England no payment is reputed fraudulent, though made "in contemplation of bankruptcy," if made *involuntarily*, that is, on the demand, verbal or otherwise, of the creditor; and not even, when the debt has not matured, if the demand be *bona fide*. See Strachan v. Barton, 34 Law & Eq. Rep. 492. This distinction is very properly not recognised by our law.

Under the law of France, a person having knowledge of, or probable cause for believing the trader's insolvency, is held to be a participant in the fraud; and art. 446 of the *Code de Commerce* of 1838 contains a provision similar to this section. See also Ord. 1673, tit. XI, art. 4; 2 Chardon du Dol, No. 208; Nouv. Den. vo. Fraude; 2 Namur, Droit Coml. 449 *et seq.*

Transfers of Debts of Insolvent within thirty days of his insolvency to his debtors to enable them to set-off, void.

91. Any transfer of a debt due by the Insolvent, made within thirty days next previous to the execution of a deed of assignment or the issue of a Writ of Attachment under this Act, or at any time afterwards, to a debtor knowing or having probable cause for believing the Insolvent to be unable to meet his engagements, or in contemplation of his insolvency, for the purpose of enabling the debtor to set up by way of compensation or set-off the debt so transferred, is null and void as regards the estate of the Insolvent; and the debt due to the estate of the Insolvent shall not be compen-

sated or affected in any manner by a claim so acquired; but the purchaser thereof may rank on the estate in the place and stead of the original creditor.

1.—ANY TRANSFER.

The object of this clause is to prevent a debtor of an insolvent purchasing a liability of the latter, for the purpose of imputing it to the payment of his own indebtedness. In the absence of this prohibition, a debtor who obtains a knowledge of circumstances, leading him to suppose his creditor would speedily become insolvent, might otherwise purchase a liability of the latter, at a depreciated price, and by imputing it towards the payment of his own debt, thus gain an undue advantage. 1 Bedarride, Faillites, &c., Nos. 113 *et seq.*

2.—TO A DEBTOR KNOWING OR HAVING PROBABLE CAUSE FOR BELIEVING.

To make the purchase invalid the purchaser must at the time be aware, or have probable cause for believing the insolvent to be unable to meet his engagements. Public rumour, or judgments, or notes protested, would singly, or collectively, be ordinarily considered probable cause for believing the insolvency of a trader.

We can find no case in Canadian reports bearing on this sec. In Montreal a judgment was rendered, in which the question specially arose. See Adams v. Sinclair, & Muir, in Sup. Court, No. 2313, Judg., 1865.

Purchasing Goods on Credit, etc., by person knowing himself unable to pay, how punishable.

If by a firm.

92. Any person who purchases goods on credit or procures advances in money, knowing or believing himself to be unable to meet his engagements, and concealing the fact from the person thereby becoming his creditor, with the intent to defraud such person, or who by any false pretence obtains a term of credit for the payment of any advance or loan of money, or of the price or any part of the price of any goods, wares or merchandize, with intent to defraud the

person thereby becoming his creditor, and who shall not afterwards have paid the debt or debts so incurred, shall be held to be guilty of a fraud, and shall be liable to imprisonment for such time as the Court may order, not exceeding two years, unless the debt or costs be sooner paid; and if such debt or debts be incurred by a partnership, then every member thereof who shall have known of the incurring, and of the intention to incur, such debt or debts, shall be similarly liable; provided always, that in the suit or proceeding taken for the recovery of such debt or debts, the defendant be charged with such fraud, and be declared to be guilty of it by the judgment rendered in such suit or proceeding.

1.—CONCEALING THE FACT, ETC., WITH INTENT TO DEFRAUD.

The concealment and intent must exist at the time of the purchase. In *re* Garrett & Co. Insol. 28 Q. B. Rep. (Ontario) 266. "It is not, however, necessary in order to constitute fraud, that "a man who makes a false representation should know it to be "false. It is enough that it be false, if made without an honest "belief, * * * * and be made deliberately with intent to "defraud." Kerr, Fraud, 12. There must be a fraudulent intent; and this intent will be presumed, where a man makes false statements with a view of benefitting himself, or misleading another. And this intent will be also presumed where a man knowingly makes a false representation, or having insufficient grounds for believing it, whereby another is mislead to his prejudice, although at the time of making it he may have had no intention to benefit himself, or to injure the person to whom the representation was made. Ibid. pp. 13 & 14.

2.—THAT IN THE SUIT OR PROCEEDING, ETC., THE DEFENDANT BE CHARGED WITH SUCH FRAUD.

That is to say, the fraud must be specifically set up in the declaration; and in the Province of Quebec, the conclusion must demand a declaration of the guilt, and a condemnation of the defendant to imprisonment, according to the terms of this clause.

In connection with this subject it may be remarked, that while the purchase of goods on credit, under the circumstances detailed in this sec. should be followed by adequate punishment, where bad faith is apparent; cases may arise, in certain classes of busi-

ness, wherein it may not be the duty of the trader to discontinue trading, as soon as he finds himself unable to pay in full. See *re* Holt, 13 Chancy Rep. (Ontario), 568. See also *re* Thurber & Young & al. contesting; *re* Tempest & Duchesnay; & *re* Freer & Gilmour, given in note to sec. 103 *post*.

Fraud must be Proved.
Award of Imprisonment.

93. Whether the defendant in any such case appear and plead or make default, the plaintiff shall be bound to prove the fraud charged, and upon his proving it, if the trial be before a jury, the Judge who tries the suit or proceeding shall immediately after the verdict rendered against the defendent for such fraud (if such verdict is given), or if not before a jury, then immediately upon his rendering his judgment in the premises, adjudge the term of imprisonment which the defendant shall undergo; and he shall forthwith order and direct the defendant immediately to be taken into custody and imprisoned accordingly; but such judgment shall not affect the ordinary remedies for the revision thereof or of any proceeding in the case.

1.—AND SHALL FORTHWITH ORDER AND DIRECT THE DEFENDANT IMMEDIATELY TO BE * * * IMPRISONED.

But this order need not prevent the Defendant avoiding the imprisonment, by payment of the debt, as provided in the previous sec. 92.

2.—FOR THE REVISION THEREOF.

That is to say, the judgment is subject to appeal, as in ordinary cases.

OF COMPOSITION AND DISCHARGE.

Deed of Composition, and executed by a certain proportion of creditors to bind all.

94. A deed of composition and discharge, executed by the majority in number of those of the creditors of an Insolvent who are respectively creditors for sums of one hundred dollars and upwards, and who represent at least three-fourths in value of the liabilities of the Insolvent subject to be computed in ascertaining such proportion, shall have the same effect with regard to the remainder of his creditors and be binding to the same extent upon him and upon them as if they were also parties to it; and such a deed may be invoked, and acted upon under this Act although made either before, pending or after proceedings upon an assignment, or for the compulsory liquidation of the estate of the insolvent; the whole subject to the exceptions contained in section one hundred of this Act.

1.—EXECUTED BY THE MAJORITY IN NUMBER OF CREDITORS, FOR SUMS OF OVER $100.00.

The contradiction which existed in the Act of 1864, as to the proportion in the value of creditors, requisite in voting at meetings, and in executing a deed of discharge, does not exist in the present. The latter is also without an omission, which existed in the former, by providing in sec. 119 *post*, that if it becomes necessary to ascertain the proportion who have voted at any meeting, or concurred in any act or document, and if it be found that the whole of the creditors of $100, and upwards, do not represent the requisite amount to give validity; such proportion may be completed by the votes or concurrence of creditors of a less amount. This sec. 119 applies also to a deed of composition and discharge.

In calculating this majority, the claims unaffected by the deed of discharge, and specified in secs. 99 and 100 *post*, will not be taken into account. Only those whose claims might be involuntarily affected by the discharge, are to be thus taken into consideration.

2.—SUBJECT TO BE COMPUTED IN ASCERTAINING SUCH PROPORTION.

The debts which are not subject to be computed, are those comprised in secs. 99 and 100 *post*.

3.—SHALL HAVE EFFECT WITH REGARD TO THE REMAINDER OF THE CREDITORS.

That is to say, non-privileged creditors who may not have become parties to the deed, may, after its legal completion, enforce its conditions, as to payment of the composition, &c., as well those who had signed it.

4.—SUCH DEED MAY BE INVOKED THOUGH MADE BEFORE, PENDING, OR AFTER ASSIGNMENT.

This clause permits a deed of discharge to be executed *before*, or pending, as well as after, proceedings in assignment, &c.

It does not appear to us that it can be legally completed, until one month from the notice by the assignees to the creditors, to fyle their claims, as provided in § 36 *ante*.

Because, before it can be prudently acted upon by the assignee, according to §§ 95, 96, and 97, he should be satisfied, that it had been executed by the requisite number of creditors, who also represented the necessary proportion in value; and he can usually have no legal means of ascertaining this, until the expiration of this period allowed to the creditors. We may go further, and say that as a rule the assignee may find it inadvisable to re-transfer an estate, upon a deed of composition and discharge, although it be, *primâ facie*, properly executed, until it has been confirmed by the Court.

As the completion of this deed usually occupies considerable time, it may be, in some cases, wise for the insolvent, to commence the work, without delay; so that upon the lapse of the time he may be enabled to deposit it with the assignee, and immediately after, apply to the Court for its confirmation.

The deed may be legally executed by a creditor who has not proved his claim. The schedule annexed to the assignment, and sworn to by the insolvent, must be taken to be correct, in the absence of proof to the contrary. In *re* Langs L. J. (Ontario), for 1868, p. 283. But where it purports to have been made between the creditors of the first part and the insolvent of the second

part, it is invalid, if not executed by the latter; and inoperative if it does not provide for the separate creditors of each partner, as well as those of the firm. In *re* Garrett & Co., 28 Q. B. Rep. (Ontario) 266.

When the insolvent has no estate to assign, and has fyled his affidavit to that effect, it has been held, in Ontario, that a deed of discharge is operative without an assignment. In *re* W. Perry, L. J. for 1866, p. 75. We cannot refrain questioning the soundness of this decision. We cannot see how, under the Act of 1864, on which that decision was given, or under the present Act, the assignee can be legally cognisant that the requisite creditors, in number and amount, had signed the discharge, until after an assignment; or that the Court could otherwise confirm it.

Form and effect of such Deed.

If it be conditional upon payment of the Composition.

95. Such deed of composition and discharge may be so made either in consideration of a composition payable in cash, or on terms of credit, or partially for cash and partially on credit; and the payment of such composition may be secured or not according to the pleasure of the creditors signing it; and the discharge therein contained may be absolute, or may be conditional upon the condition of the composition being paid; and such deed may contain instructions to the Assignee as to the manner in which he is to proceed, and to deal with the estate and effects of the Insolvent, subsequent to the deposit of such deed with him, which instructions shall be obeyed by the Assignee; but if such discharge be conditional upon the composition being paid, and the deed of composition and discharge therein contained should cease to have effect, the Assignee shall immediately resume possession of the entire estate and effects of the Insolvent in the state and condition in which they shall then be; but the creditors holding claims which were proveable before the execution of such deed shall not rank, vote or be computed as creditors concurrently with those who have acquired claims subsequent to the execution thereof

for any greater sum than the balance of composition remaining unpaid; but after such subsequent creditors shall have received dividends to the amount of their claims, then such original creditors shall have the right to rank for the entire balance of their original claims then remaining unpaid, and shall be computed for all purposes for which the proportions of creditors require to be ascertained, as creditors for the full amount of such last mentioned balance.

1.—This, and the following section, are not to be found in the Act of 1864.

2.—AND THE DEED OF COMPOSITION AND DISCHARGE THEREIN SHOULD CEASE TO HAVE EFFECT.

It would appear that this part of the sec. applies to the case of creditors giving a discharge conditional upon a composition, payable by instalments, without security; and thereupon allowing the latter to regain possession of the stock, and resuming trade, so as to pay them. Failing to meet the instalments, the assignee is empowered to regain possession of the entire estate, as he may then find it to be; but the creditors can vote on and receive unpaid instalments only concurrently with those who may hold claims, created subsequent to the re-transfer to the insolvent, and if the subsequent creditors receive "dividends to the amount of their claims," then the former may "rank for the entire balance of their original claims." It may be understood that the assignee can re-assume possession, without any fresh legal process.

In the Province of Quebec, anterior to the Insolvent Act of 1864, the effect of non-payment of an instalment, at maturity, under a deed of composition, was to revive the original claim. Atkinson v. Nesbitt, 1 Rev. de Jur. 110; Brown v. Hartigan, 5 L. C. Jur. 41 A similar rule prevails in the English courts. Montague on Composition, 209.

Deed of Reconveyance by Assignee to Insolvent. Its effect. If it be contested, and a payment of Composition during the contestation. Form and Registration of Deeds.

96. The re-conveyance by the Assignee to the Insolvent, or to any person for him of any part of his estate or effects, whether real or personal, if made in conformity with the

terms of a deed of composition and discharge shall have the same effect (except as the same may be otherwise agreed by the conditions of such deed or re-conveyance), as if such property had been sold by the Assignee in the ordinary course, and after all the preliminary proceedings, notices and formalities herein required for such sale; and if such deed of composition and discharge be contested, and pending such contestation, any payment or instalment of the composition falls due under the terms of such deed, the payment thereof shall be postponed till after the expiration of ten days after final judgment upon such contestation; and if proceedings for revision or appeal be commenced, then until after the expiration of ten days after the judgment in revision or in appeal, as the case may be, and the deed of re-conveyance need not contain any further or more special description of the effects and property re-conveyed than is required to be inserted in the deed of assignment, and may be enregistered in like manner and with like effect.

Duty of Assignee receiving a Deed of Composition.

97. If the Insolvent procures and deposits with the Assignee a deed of composition and discharge, duly executed as aforesaid, the Assignee shall immediately give notice of such deposit by advertisement; and if opposition to such composition and discharge be not made by a creditor, within three juridical days after the last publication of such notice, by filing with the Assignee a declaration in writing, that he objects to such composition and discharge, the Assignee shall act upon such deed of composition and discharge according to its terms; but if opposition be made thereto within the said period, or if made be not withdrawn, then he shall abstain from taking any action upon such deed until the same has been confirmed, as hereinafter provided.

1.—THE ASSIGNEE SHALL IMMEDIATELY GIVE NOTICE.

By the Act of 1864 the assignee could give notice of the deposit of the deed of composition, only after the expiration of the period for the declaration of a dividend. The present Act, with a view of expediting the operation of the discharge, enables him to do so "immediately." This word should, we think, be understood to mean, immediately after the expiration of the delay for the fyling of claims, for the reasons submitted in note to § 94 *ante*.

2.—AND IF OPPOSITION, ETC., BE NOT MADE WITHIN THREE JURIDICAL DAYS, ETC., THE ASSIGNEE SHALL ACT UPON SUCH DEED.

The Act of 1864 gave a delay of six.

The express authority given by this part of the sec., to the assignee, to act upon the deed, if opposition be not fyled within three days after the notice of deposit, must be qualified by the fact, that a document purporting to be a deed of composition and discharge, is not legally so, until after execution by the requisite creditors, in number and amount, or, confirmed as such by the Court. Therefore the assignee should, as has been already observed, be made legally cognisant that it is a deed of composition and discharge, before he treats it as such. Vide notes to § 94 *ante*.

If an estate be re-transferred to an insolvent, upon a deed of composition and discharge, and the deed should be afterwards annulled, the assignee may find it necessary to regain possession. The statute does not appear to make any express provision for such an occurrence happening. In event of non-payment of instalments, under the deed, he can re-assume possession of the estate, under sec. 95 *ante*, but in any other case, it may be probable he can exercise a similar right. Where the estate has been placed under the statute, by writ for compulsory liquidation, an *alias* writ may be requisite, which would probably be granted by petition, founded on affidavit.

Effect of consent of proper number of Creditors to a Discharge.

As to holders of Negotiable Paper unknown to Insolvent.

98. The consent in writing of the said proportion of creditors to the discharge of a debtor absolutely frees and discharges him, after an assignment, or after his estate has been put in compulsory liquidation, from all liabilities whatsoever (except such as are hereinafter specially excepted)

existing against him and proveable against his estate, which are mentioned or set forth in the statement of his affairs exhibited at the first meeting of his creditors, or which are shewn by any supplementary list of creditors furnished by the Insolvent, previous to such discharge, and in time to permit of the creditors therein mentioned obtaining the same dividend as other creditors upon his estate, or which appear by any claim subsequently furnished to the Assignee, whether such debts be exigible or not at the time of his insolvency, and whether the liability for them be direct or indirect; and if the holder of any negotiable paper is unknown to the Insolvent, the insertion of the particulars of such paper in such statement of affairs or supplementary list, with the declaration that the holder thereof is unknown to him, shall bring the debt represented by such paper, and the holder thereof, within the operation of this section.

1.— ABSOLUTELY FREES AND DISCHARGES HIM FROM ALL LIABILITIES.

The Act of 1864 was held, both in Ontario and Quebec, to have a retroactive effect. There seem to be no change in the present law to prevent a similar application. The words "*from all liabilities whatsoever existing*," clearly embraces those created before the existence of the statute. The retroaction must be understood to be limited to debts only, created anterior to 1st Sept. 1869; it cannot, in the Provinces of New Brunswick and Nova Scotia, be extended to such frauds, or acts of the debtor, committed previous to that period, which, if committed subsequently, would render his estate liable to compulsory liquidation. See note on § 18 *ante* and § 101 *post*. In the Provinces of Ontario and Quebec, the Act of 1864 still applies to traders with respect to fraud committed anterior to Sept. 1869, except in so far as it may not be repealed or restricted by the present law.

The claims which are exempted from the operation of a deed of composition, are those specified in secs. 99 and 100 *post*. The holders of these claims can, of course, waive this privilege.

Discharge without composition not to affect secondary liabilities.

99. A discharge without composition under this Act, whether consented to by any creditor or not, shall not operate any change in the liability of any person secondarily liable to such creditor for the debts of the Insolvent, either as drawer or indorser of negotiable paper, or as guarantor, surety or otherwise, nor of any partner or other person liable jointly or severally with the Insolvent to such creditor for any debt; nor shall it affect any mortgage, hypothec, lien or collateral security held by any such creditor as security for any debt thereby discharged.

1.—A DISCHARGE, ETC., SHALL NOT OPERATE ANY CHANGE IN THE LIABILITY OF A PERSON SECONDARILY LIABLE.

The object of this clause is to protect the rights of a creditor, to whom the bankrupt is primarily liable, from losing his recourse against indorsers and sureties, by consenting to his discharge. And also to preserve his security on any real or personal property. Similar protection is granted by the Scotch act. § 56, Kinnear, Bank. 76. As to the rule in France, see Code de Com. art. 545. As to English rules, see Archbold, Bank. 160 *et seq.*

Discharge under this Act not to apply to certain debts, or liabilities.

100. A discharge under this Act shall not apply, without the express consent of the creditor, to any debt for enforcing the payment of which the imprisonment of the debtor is permitted by this Act, nor to any debt due as damages for assault or wilful injury to the person, seduction, libel, slander, or malicious arrest, nor for the maintenance of a parent, wife or child, or as a penalty for any offence of which the Insolvent has been convicted, unless the creditor thereof

shall file or claim therefor; nor shall any such discharge apply without such consent, to any debt due as a balance of account due by the Insolvent as an assignee, tutor, curator, trustee, executor or administrator under a will, or under any order of court, or as a public officer; nor shall debts to which a discharge under this Act does not apply, nor any privileged debts, nor the creditors thereof, be computed in ascertaining whether a sufficient proportion of the creditors of the Insolvent have voted upon, done or consented to any act, matter or thing under this Act; but the creditor of any debt due as a balance of account by the Insolvent as assignee, tutor, curator, trustee, executor, administrator or public officer may claim and accept a dividend thereon from the estate without being, by reason thereof in any respect affected by any discharge obtained by the Insolvent.

1.—PRIVILEGED CLAIMS NOT COMPUTED.

The privileged claims specified will not be not computed "in ascertaining whether a sufficient proportion of the creditors" had done anything under this Act. Therefore the signature of a privileged creditor to a deed of composition and discharge, will not, as respects such privileged claim, contribute to the necessary proportion and amount, so to make such deed available.

In Ontario it has been held, under the sub. sec. 5 of sec. 9 of Act of 1864, from which this sec. is taken, that the deed of discharge does not prevent a party from being committed upon a judgment summons of the Division Courts Act. If it did, a party applying for protection from arrest should show clearly that the name of the plaintiff was in his schedule, and this is not sufficiently done by putting in a copy of the schedule, without swearing that the plaintiff's name is there. Mackay & al. v. Goodson, 27 Q. B. Rep. 263.

Confirmation of Discharge, and on what conditions it shall be granted.

Creditors or Assignee may oppose on certain grounds.

Proviso: as to non-keeping of certain books.

Further provision as to acts of fraud or preference, committed before certain periods.

101. An Insolvent who has procured a consent to his discharge or the execution of a deed of composition and discharge, within the meaning of this Act, may file in the office of the court the consent or deed of composition and discharge, and may then give notice (Form N) of the same being so filed, and of his intention to apply by petition to the Court in the Provinces of Quebec or Nova Scotia, or in the Provinces of Ontario or New Brunswick to the Judge, on a day named in such notice (which however shall not be before the day on which a dividend may be declared under this Act), for a confirmation of the discharge effected thereby; and such notice shall be given by advertisement in the official *Gazette* for one month, and also for the same period, if the application is to be made in the Province of Ontario, New Brunswick or Nova Scotia, in one newspaper, and if in the Province of Quebec, in one newspaper published in French, and in one newspaper published in English, in or nearest the place of residence of the Insolvent; and upon such application, any creditor of the Insolvent or his Assignee under the authority of the creditors, may appear and oppose such confirmation, either upon the ground of fraud or fraudulent preference within the meaning of this Act, or of fraud or evil practice in procuring the consent of the creditors to the discharge, or their execution of the deed of composition and discharge, as the case may be, or of the insufficiency in number or value of the creditors consenting to or executing the same, or of the fraudulent retention and

concealment by the Insolvent of some portion of his estate or effects, or of the evasion, prevarication or false swearing of the Insolvent upon examination as to his estate and effects, or upon the ground that the Insolvent has not kept an account book shewing his receipts and disbursements of cash, and such other books of account as are suitable for his trade, or, that having at any time kept such book or books, he has refused to produce or deliver them to the Assignee, or that he is wilfully in default to obey any provision of this Act, or any order of the Court or Judge; and if any of the said grounds be proved, the confirmation of his discharge shall be refused and such discharge set aside and annulled; but in the Provinces of Ontario and Quebec, the omission to keep such books before the coming into force of the Insolvent Act of 1864, and in the Provinces of New Brunswick and Nova Scotia, such omission previous to the coming into force of this Act, shall not be a sufficient ground for contesting the confirmation of the discharge of an Insolvent; And provided further that any act on the part of the Insolvent, which might be held to be an act of fraud or fraudulent preference within the meaning of the Insolvent Act of 1864, or this Act, but which would not amount to fraud if the said Act or this Act had not been passed, shall not be a ground for contesting the confirmation of the discharge of any Insolvent, if such act was done by the Insolvent, in the Province of Ontario or Quebec, before the coming in force of the Insolvent Act of 1864, or in the Province of Nova Scotia or New Brunswick, before the coming into force of this Act.

1.—THAT THE INSOLVENT HAS NOT KEPT AN ACCOUNT BOOK.

A discharge will not be granted if the Insolvent has not kept proper books. In *re* Beare L. J. (Ontario) for 1867, p. 295.

If the Insolvent does not file the Consent or Deed, for confirmation within a certain time, a creditor may notify him to do so, and apply for an order annulling the Deed.

Proviso: if the Deed be filed.

102. If the Insolvent does not deposit such consent or such deed of composition and discharge, as the case may be, in the court, and give notice of his application for a confirmation of such discharge, within one month from the time at which the same has been effected under this Act, and proceed therewith thereafter according to such notice, any creditor for a sum exceeding two hundred dollars, may cause to be served a notice in writing upon the Insolvent, requiring him to file in the Court the consent, or the deed of composition and discharge, as the case may be; and may thereupon give one month's notice to the Insolvent (Form O) of his intention to apply by petition to the Court or Judge who has authority under this Act to confirm such discharge, on a day named in such notice, for the annulling of the discharge; and on the day so named may present a petition to to the Court or Judge, in accordance with such notice, setting forth the reasons in support of such application, which may be any of the reasons upon which a confirmation of discharge may be opposed; and upon such application, if the Insolvent has not at least one week before the day fixed for the presentation thereof, filed in the office of the court the consent or deed under which the discharge is effected, the discharge shall be annulled without further inquiry except as to the service upon him of the notice to file the same; but if such consent or deed be so filed, or if upon special application, leave be granted him to file the same at a subsequent time and he do then file the same, the Court or

Judge, as the case may be, shall proceed thereon as upon an application for confirmation of such discharge.

1.—WITHIN ONE MONTH.

The Act of 1864 gave a delay of two months, for the notice of application for confirmation by the Court.

Powers of Court or Judge on application for Confirmation of Discharge, etc.

103. The Court or Judge, as the case may be, upon hearing the application for confirmation of such discharge, the objections thereto, and any evidence adduced, shall have power to make an order, either confirming the discharge or annulling the same according to the effect of the evidence so adduced; but if such evidence should be insufficient to sustain any of the grounds hereinbefore detailed as forming valid grounds for contesting such confirmation, but should nevertheless establish that the Insolvent has been guilty of misconduct in the management of his business, by extravagance in his expenses, recklessness in endorsing or becoming surety for others, continuing his trade unduly after he believed himself to be insolvent, incurring debts without a reasonable expectation of paying them (of which reasonable expectation the proof shall lie on him, if such debt was contracted within thirty days of an assignment or the issue of a Writ of Attachment); or negligence in keeping his books and accounts; or if such facts be alleged by any contestation praying for the suspension of the discharge of the Insolvent, or for its classification as second class, the Court or Judge may thereupon order the suspension of the operation of the discharge of the Insolvent for a period not exceeding five years or may declare the discharge to be of the second class, or both, according to the discretion of the Court or Judge.

1.—THE COURT ON HEARING THE OBJECTION TO THE DISCHARGE.

The following decisions, rendered in Montreal, on contestations of applications for discharge, under the Act of 1864, may partly serve to illustrate this section:—

In *re* Alex. Thurber v. Law, Young & Co. contesting.

Thurber applied for confirmation of his discharge. Law, Young & Co., and other creditors, contested it, on the following grounds:

1st. That insolvent was bankrupt, to his own knowledge, in 1863, and was so continuously up to his assignment in May, 1865.

2nd. That he had been guilty of making fraudulent preferences.

Per curiam. (Monk J.) In the first place it is alleged that the insolvent had made several purchases in contemplation of bankruptcy. He had been doing business in Montreal for several years past. He had evidently no knowledge of book-keeping. On the 30th Decr. 1863, he took stock. At that time he considered himself to be perfectly solvent. But the balance sheet showed that his solvency depended upon a great many outstanding debts, which could not be considered of much value. He had little or no capital, but nevertheless his transactions were very large. During 1864 and 1865 he made purchases from Messrs. Law, Young & Co., and other parties, and the first pretension is, that he made these purchases knowing that he was insolvent, and in fraudulent contemplation of bankruptcy. Further, that in 1865, when on the very verge of bankruptcy, he credited his wife with $3,000.00 with interest. It must be confessed this had a suspicious look, as well as the circumstance that he made no balance sheet in 1864. Yet I do not find in these circumstances sufficient evidence to justify me in thinking that at this time Thurber knew himself to be insolvent. During the time he was making these purchases he was borrowing money at heavy interest from brokers, and obtaining large discounts from the banks. He appears all this time to have believed he could pull through. The $3,000.00 credited to his wife was done at the suggestion of his book-keeper. It must be further borne in mind that two-thirds of his creditors had consented to his discharge. This was a fact which should have considerable weight. There was another fact: a note of his for upwards of $3,000.00, was coming due on 15th May. Three days previously he went to the bank and offered $2,000.00. The bank said they would not take the $2,000.00, but they would hold the note over for a few days. He appears to have struggled hard to maintain his credit. This did not look like the conduct of a man about to make a fraudulent bankruptcy. The Court could not, in view of all these circumstances, go to the extent of saying that he was

aware of, and made these purchases in contemplation of insolvency.

The second ground urged was fraudulent preferences. He did not consider that the payments to brokers, a few days before his declaration of insolvency, amounted to fraud, sufficient to refuse the application for a confirmation of his discharge. 11 L. C. Jur. 45.

In *re* Tempest, & Duchesnay & al. contestants. The judgment in this case arose on an application for discharge by Tempest; which Duchesnay and other creditors contested. The creditors had given no discharge to the applicant, and after the delay of one year from the date of the assignment, he applied for it from the Court. The contestation alleged:

1st. A fraudulent retention of moneys belonging to the estate.

2nd. That the firm, in which the insolvent had been a partner, had purchased goods on credit, knowing themselves at the time to be insolvent, and concealing the fact from the vendors.

3rd. That the firm had given fraudulent preferences.

A statement of the circumstances on which these charges were based, would exceed the space at our command. The legal points decided by the contestation must suffice for the present purpose. They are as follows:

1st. That he who buys goods on credit, impliedly assures the vendor, if not of the actual sufficiency of the assets to meet his liabilities, at least that there is a reasonable probability of such sufficiency.

2nd. That while the vendor on credit takes the risk of the subsequent insolvency of the debtor, he is not supposed to contemplate the escape or the bankruptcy of the debtor, by reason of a state of insolvency actually existing at the time of his purchase.

3rd. That where a party buys goods on credit, knowing his affairs to be in a bad state, although he may have no intention of defrauding the vendor, yet in the eye of the law he does a wrong, and having subsequently declared his insolvency, the Court will be justified in suspending his discharge, for a period, under its discretionary power. 11 L. C. Jur. 57.

In *re* Wm. M. Freer, and Gilmour & al. contesting.

In this case, Freer had assigned in Feby. 1867. On 26th of March, 1868, he petitioned for his discharge, under the Act of 1864, and alleged that he had failed to obtain the requisite number of creditors to consent to a discharge, and therefore asked it from the Court. This application was contested by Gilmour & Co. on the ground of fraud.

In evidence it appeared that Freer, as a partner in the firm of Freer, Boyd & Co., purchased from contestants on 28th Jan. 1867, fifty-five brls. of potash, strictly for cash, and valued at $2103.11. On the 29th Freer took delivery, and said he would check the

account, and about 1 P. M. on that day he would pay the price. The contestants' agents, after repeated demands for the money, failed to obtain it, the insolvent making various excuses and promises. On the 4th of Feby., six days after the delivery of the potash, Freer said he had failed. It further appeared that he had sold and been paid for the potash on the 31st Jany.

On these facts, the Court (Torrance J.) held that the insolvent had been guilty of fraud, within the meaning of the act, and his discharge was accordingly suspended for five years. Sec. 12 L. C. Jur. 315.

The same Judge, in October term (1869), suspended a discharge for two years, on the grounds of reckless trading, selling goods below cost, and not keeping proper books. Exparte Tessier, & Martin & al. contesting.

2.—ITS CLASSIFICATION AS SECOND CLASS.

This expression is borrowed from the English bankrupt law, 12 & 13 Vic. cap. 106. By that statute the Commissioner in bankruptcy when he certified in the certificate of discharge that the bankruptcy had arisen from unavoidable losses and misfortunes, awarded a certificate of the first class; or, that it had not wholly arisen from unavoidable losses and misfortunes, when a certificate of the second class was given; or, that the bankruptcy had not arisen from unavoidable losses and misfortunes, when a certificate of the third class only was given Arch. Bank. 401. *Ibid*, Book II, 100.

Our Act permits of but two classes. The Act of 1864 made no distinction whatever. In that, we think, it erred. It would seem but just there should be a distinction between the discharge given to an insolvent whose losses were unavoidable, and whose dealings were honorable; and that to another whose conduct bordered on recklessness or fraud, though insufficiently so to warrant a refusal of his discharge.

3.—THE JUDGE MAY THEREUPON ORDER THE SUSPENSION OF THE DISCHARGE.

See cases of Tempest & Duchesnay, and of Freer & Gilmour, reported in note 1 to this sec., *ante*.

How the discharge shall be proveable.

104. Until the Court or Judge, as the case may be, has confirmed such discharge, the burden of proof of the discharge being completely effected under the provisions of this Act,

shall be upon the insolvent; but the confirmation thereof, if not reversed in appeal, shall render the discharge thereby confirmed, final and conclusive; and an authentic copy of the judgment confirming the same shall be sufficient evidence as well of such discharge as of the confirmation thereof.

Application to Court or Judge for discharge, if not obtained from Creditors.

105. If, after the expiration of one year from the date of an assignment made under this Act, or from the date of the issue of a Writ of Attachment thereunder, as the case may be, the insolvent has not obtained from the required proportion of his creditors a consent to his discharge, or the execution of a deed of composition and discharge, he may apply by petition to the Court or Judge, having power hereunder to confirm his discharge if consented to, to grant him his discharge, first giving notice of such application, (Form P) for one month in the manner hereinbefore provided for notice of application for confirmation of discharge.

1.—IN THE MANNER HEREINBEFORE PROVIDED.

See sec. 101 *ante*.

Proceedings on such application; and powers of the Court or Judge.

106. Upon such application, any creditor of the Insolvent, or the Assignee by authority of the creditors, may appear and oppose the granting of such discharge upon any ground upon which the confirmation of a discharge may be opposed under this Act, or may claim the suspension or classification of the discharge or both; and whether such application be contested or not it shall be incumbent upon the Insolvent to prove that he has in all respects conformed him-

self to the provisions of this Act; and he shall submit himself to any order which the Court or Judge may make, upon or without an application to that effect, to the end that he be examined touching his estate and effects and his conduct and management of his affairs and business generally, and touching each and every detail and particular thereof; and the Court or Judge may also require from the Assignee a report in writing upon the conduct of the Insolvent and the state of his books and affairs before and at the date of his insolvency; and thereupon the Court or Judge, as the case may be, after hearing the Insolvent, and the opposant, if any, and any evidence that may be adduced, may make an order either granting the discharge of the Insolvent or refusing it; or in like manner and under the like circumstances to those in and upon which the discharge could be suspended or classified as hereinbefore provided upon an application to confirm it, an order may be made suspending it for a like period, or declaring it to be of the second class, or both.

1.—INCUMBENT ON THE INSOLVENT TO PROVE THAT HE HAS CONFORMED TO THE PROVISIONS OF THE ACT.

Where there is no contestation, it may be presumed that *primâ facie* proof is alone neeessary to shew that the provisions of the Act had been complied with. The production of the deed of assignment and schedule of creditors, and the affidavit of the assignee, or of the insolvent, and his clerk or book-keeper, with copies of the *Gazette* and newspapers containing the notices of the application, would probably be considered sufficient. If there should be a contestation, it cannot be sustained on the ground that the assignee had neglected his duty, or neglected to give notice of a meeting of creditors for examination of the insolvent. In *re* Thomas, 15 Chancy. Rep. (Ontario), 196.

2.—ANY ORDER WHICH THE COURT OR JUDGE MAY MAKE.

The advisability of examining the insolvent, and requiring a report from the assignee, appears to be left to the discretion of the Court.

3.—UPON WHICH THE DISCHARGE COULD BE SUSPENDED OR CLASSIFIED.

See note 2 to sec. 103 *ante*, for explanation of the classification of the discharge of an insolvent.

Suspension of Discharge, or its classification as second class, on application of Creditors.

107. At any time before judgment upon an application for obtaining a discharge, the creditors or the same proportion of them that may bind the remainder by a consent to a discharge, may file before the Court, or Judge before whom such application is pending, a declaration in writing, setting forth that it is their desire that the discharge of the Insolvent should (if granted) be suspended for a period therein named not exceeding five years, or that it should be classed as second class, or both; and thereupon if such Court or Judge should be of opinion that the Insolvent is not shewn to have done or omitted anything, the doing or omission of which would deprive him of the right to his discharge under this Act (but not otherwise) and shall therefore be of opinion to grant his discharge, such Judge shall declare such opinion, and shall thereupon grant such discharge, but shall suspend the same as required by such declaration of the creditors.

1.—BUT SHALL SUSPEND THE SAME AS REQUIRED BY SUCH DECLARATION OF THE CREDITORS.

It would thus appear that the creditors, under the conditions of this section, can in any case compel the suspension of the discharge. The length of the suspension within five years, is left with the Court to determine.

Discharge obtained by fraud, to be void.

108. Every consent to a discharge or composition, and every discharge or confirmation, of any discharge or composition, which has been obtained by fraud or fraudulent pre-

ference, or by means of the consent of any creditor procured by the payment or promise of payment to such creditor, of any valuable consideration for such consent, or by any fraudulent contrivance or practice whatever tending to defeat the true intent and meaning of the provisions of this Act in that behalf, shall be null and void.

1.—EVERY DISCHARGE OBTAINED BY FRAUD, OR FRAUDULENT PREFERENCE, SHALL BE NULL.

In Superior Court, Montreal, it was held by *Monk J.*, that when the consideration given to a creditor to induce him to sign the discharge of insolvent, did not injure the estate in the slightest degree, the validity of the deed remained unaffected. Tempest & Duchesnay & al., 11 L. C. Jur. 46.

So also, if a creditor takes a guaranty for an additional amount to that payable by the deed, and signs the deed, *after* the other creditors had signed, and been paid the composition. See Smith v. Saltyman, 25 English Law & Eq. Rep. 476, where the English rules, on this question, are stated by the Judges.

To a plea of discharge under the Canadian Act of 1864, confirmed by the Court, the Plaintiff replied, a corrupt agreement between the insolvent and David Torrance & Co., parties to the deed of composition and discharge, that in consideration of executing it, D. T. & Co. should receive an additional sum above the composition, for which the insolvent gave his note, and that the Plaintiff, and the other creditors, had no knowledge of it until after the confirmation; and that Plaintiff never signed the deed of discharge.

Held—a good answer: the confirmation not being conclusive by the Act under such circumstance. Thompson v. Rutherford, 27 Q. B. Rep. (Ontario) 205.

EXAMINATION OF THE INSOLVENT AND OTHERS.

Examination of Insolvent, and how conducted and recorded.

How attested.

109. Immediately upon the expiry of the period of one month from the first insertion of the advertisement giving notice of the appointment of an Assignee, a meeting of the creditors shall be held for the public examination of the Insolvent, who shall be summoned to attend such meeting, the same being first duly called by advertisement; and at such meeting the Insolvent may be examined on oath, sworn before the Assignee, by or on behalf of any creditor present, in his turn; and the examination of the Insolvent shall be reduced to writing by the Assignee, and signed by the Insolvent; and any question put to the Insolvent at such meeting which he shall answer evasively or refuse to answer, shall also be written in such examination, with the replies made by the Insolvent to such questions; and the Insolvent shall sign such examination, or if he refuse to sign the same, his refusal shall be entered at the foot of the examination, with the reasons of such refusal, if any, as given by himself; and such examination shall be attested by the Assignee and shall be filed in the office of the Court.

1.—A MEETING OF CREDITORS SHALL BE HELD.

Held, in Ontario, that the other provisions of the Act of 1864, having been complied with, a discharge could not be refused the Insolvent because of the neglect of the Assignee to give notice

of meeting for examination of the former, as required by sec. 10, sub. sec. 1. The Assignee's neglect of duty was no reason for depriving the debtor of his discharge. In *re* Thomas, 15 Chancy. Rep. 196. This sec. of the Act of 1869, is a copy of the above sec. of the Act of 1864, with the exception of giving a delay of one month instead of two.

2.—THE INSOLVENT MAY BE EXAMINED.

The following decisions of the English Courts, on the examination of a bankrupt, may help to interpret this sec.

The debtor may have counsel to consult upon his examination, in regard to questions he must answer, *viva voce*, and to prepare answers to those put to him in writing. Exparte Winsor, 8 Law Rep. 514. But it is within the discretion of the Court to allow counsel in the *viva voce* examination. Peabody v. Harmon, 3 Gray, 113.

In Montreal (Monk J.) held that an Insolvent could not be cross-examined by his counsel in his examination by the creditors in Court. Fraser, & Sauvageau, Assignee, & Winning contesting. 12 L. C. Jur. 272.

Examinations taken in another action may be admissible against him to show the state of his property. Avery & Hobbs, Bank. U. S. 186.

3.—ANY QUESTION PUT TO THE INSOLVENT WHICH HE SHALL REFUSE TO ANSWER.

He must answer the question put to him, although the answer may subject him to penalties, as for smuggling, &c.; (exparte Meymott, 1 Atk. 200); or may tend to establish an act of bankruptcy. Pratt's case, 1 Glyn & J. 58. He is not obliged to answer any that has a tendency to accuse him of a criminal act. In *re* Heath, Mon. & B. 185; 2 Dea. & C. 214. But he cannot, though after he has passed his last ordinary examination, refuse to answer on the ground that the tendency of the question is to shew that he has not made a full disclosure, and by consequence has been guilty of perjury. In *re* Smith 2 Dea. & C. 230; Mon. & B. 203. On several occasions where applications have been made to the Court, to limit or restrain the Commissioners in Bankruptcy in their examination, they have uniformly been refused. Arch. Bank. 382.

The examination does not extend to his moral conduct, unless it is shewn that the answers would disclose something relating to the disposition of his property. Anon. 1 Fon. B. c. 58. The examination should be full, fair, and searching, not rambling or irregular. Exparte Legge, 17 Jur. 415.

4.—OR ANSWERS EVASIVELY.

As to fully answering questions, there is no definite rule, the question being whether the answers are sufficient to satisfy the mind of any reasonable man. Exparte Nowlan 6 T. R. 118.

If a bankrupt swears to a disposition of property that appears incredible, or where the story is not such as to satisfy the minds of reasonable persons as to its truth, it is unsatisfactory, and he may be committed. Exparte Lord, 16 M. & W. 462; Exparte Nowlan, 6 T. R. 118. Where a bankrupt, on examination, being asked to account for a deficiency of £13,000, answered he had lost £2,000 on goods sold, and £1,000 by mournings, and for the last nine or ten years he had been extravagant and squandered large sums of money, this was held unsatisfactory, and that it was right to commit him upon it. Rex v. Perrot, 2 Burr, 1122. Afterwards he answered he had given £5,000 to a woman since dead, in one year; that he drew the money from a man who sold goods for him, since dead. This was held unsatisfactory. *Ibid*, 1215. When asked if he purchased certain silks of a party, and he answered, he could not possibly recollect, and being pressed, said he rather believed he had, this was held to be satisfactory. Miller's case, 3 Wils. 427. Whether for the purpose of determining that the answers of a bankrupt are unsatisfactory, the Court can resort to the evidence of third parties. *Quære*, Crowley's case, 2 Swanst. 1.

Further Examination of Insolvent.

110. The Insolvent may also be from time to time examined as to his estate and effects upon oath, before the Judge, by the Assignee or by any creditor, upon an order from the Judge obtained without notice to the Insolvent, upon petition, setting forth satisfactory reasons for such order,—and he may also be examined in like manner upon a *subpœna* issued as of course without such order, in any case in which a Writ of Attachment has been issued against his estate and effects; which *subpœna* may be procured by the plaintiff, or by any creditor intervening in the action for that purpose, or by the Assignee, at any time after the return of the Writ of Attachment.

1.—MAY BE EXAMINED FROM TIME TO TIME BEFORE THE JUDGE.

See note No. 1 to sec. 109 *ante*.

Held in Montreal, that the Insolvent may be examined by a creditor, before the Judge, notwithstanding that a deed of composition and discharge had been deposited in Court, and that notice had been given by the Insolvent of his intention to seek its confirmation.

This decision arose on the application of the creditor, by petition, to examine the Insolvent, as to his estate. The application had been granted, without notice to the Insolvent. On the day fixed for his examination, he appeared by counsel, and refused to be sworn, on the ground that he was no longer insolvent, in consequence of the due execution of a deed of composition and discharge, the sufficiency of which he was then prepared to prove. Bowie & Rooney a creditor, 13 L. C. Jur. 191.

Subsequent Examination on Application for Discharge, etc.

111. The Insolvent may also be examined on his application for a discharge or for confirmation of a discharge, or upon the application of any creditor for annulling a discharge; or upon any petition by him in the course of proceedings for the compulsory liquidation of his estate.

Other Persons may be Examined on Order of the Judge.

112. Any other person who is believed to possess information respecting the estate or effects of the Insolvent, may also be from time to time examined before the Judge upon oath, as to such estate or effects upon an order from the Judge to that effect, which order the Judge may grant upon petition setting forth satisfactory reasons for such order, without notice to the Insolvent or to the person to be so examined.

Insolvent to Attend Meetings of Creditors.

113. The Insolvent shall attend all meetings of his creditors, when summoned so to do by the Assignee, and shall

answer all questions that may be put to him at such meetings touching his business, and touching his estate and effects; and for every such attendance he shall be paid such sum as shall be ordered at such meeting, but not less than one dollar.

1.—THE INSOLVENT SHALL ATTEND ALL MEETINGS.

Refusal to attend a meeting, or non-attendance (unless by a sufficient cause) may be a ground for opposing his discharge, as provided in sec. 101 *ante*.

Examination of Wife or Husband of Insolvent.

114. If it be made known to the Judge by the Assignee by petition substantiated under oath, that any probable cause exists therefor, the Judge may order the wife or husband of the Insolvent, as the case may be, to be examined as to the reception, use retention or concealment by or on behalf of the Insolvent, or by or on behalf of the person so examined, or any other person, of any of the estate or effects of the Insolvent.

1.—THE WIFE OR HUSBAND OF THE INSOLVENT MAY BE EXAMINED.

This right did not exist in the Act of 1864. It is to be found in the English Act, 12 & 13 Vic. c. 106, s. 118. In England, the wife or husband of the Insolvent, is subject to the same rules, as to examination, as the Insolvent, and may be committed for refusal to answer or to answer fully any lawful question. Arch. Bank. 382.

OF PROCEDURE GENERALLY.

Form of deeds under this Act, and their effect in Provinces in which they are executed.

115. All deeds of assignment, of transfer, of composition and of reconveyance, shall be executed in the manner in which deeds are usually executed in the Province wherein such deeds shall respectively bear date:—And if such deeds be executed in any part of Canada (other than the Province of Quebec, according to the form of execution of deeds prevailing there, they shall have the same force and effect in the Province of Quebec as if they had been executed in that Province before a Notary, and if such deeds be executed in that Province before a Notary they shall have the same force and effect elsewhere in the Dominion as if they had been executed according to the law in force in such other Province, and copies of such deeds, certified as aforesaid, shall constitute before all courts and for all purposes, *prima facie* proof of the execution and of the contents of the originals of such deeds respectively, without production of the originals thereof.

To what Assignments these Sections shall apply.
Provisions as to certain Proceedings and as to costs.

116. The operation of sections ten and twenty-nine of this Act, shall extend to all the assets of the Insolvent, of every kind and description, although they are actually under seizure under any ordinary Writ of Attachment, or under any Writ of Execution, so long as they are not actually sold

by the Sheriff or Sheriff's officer under such Writ; but in the Provinces of Nova Scotia and New Brunswick this section shall not apply to any Writ of Execution in the hands of the Sheriff, at the time of the coming into force of this Act; and the rights, liens and privileges, of the seizing or attaching creditor, for his costs upon any such writ, shall be the same as they were previous to the passing of this Act, in the Province in which such writ shall have issued.

1.—THE OPERATION OF SECTIONS TEN AND TWENTY-NINE.

See notes on these sections, *ante*.

Notices under this Act, how given.

117. Notices of meetings of creditors and all other notices herein required to be given by advertisement, without special designation of the nature of such notice, shall be so given by publication thereof for two weeks in the *Official Gazette*, also in the Province of Quebec in every issue during two weeks of one newspaper in English and one in French, and in the Provinces of Ontario, New Brunswick and Nova Scotia, in one newspaper in English, published at or nearest to the place where the Insolvent has his chief place of business; and in any case, unless herein otherwise provided, the Assignee or person giving such notice shall also address notices thereof to all creditors and to all representatives of foreign creditors within Canada, and shall mail the same with the postage thereon paid, at the time of the insertion of the first advertisement.

1.—THE ASSIGNEE SHALL MAIL NOTICES TO FOREIGN CREDITORS.

We should presume the object of mailing notices of meetings to a foreign creditor, is to enable him, or his representative, to attend. But as only two weeks notice is required to be given,

OF PROCEDURE GENERALLY.

Form of Deeds under this Act, and their effect in Provinces other than that in which they are executed.

115. All deeds of assignment, of transfer, of composition and of re-conveyance, shall be executed in the manner in which deeds are usually executed in the Province wherein such deeds shall respectively bear date;—And if such deeds be executed in any part of Canada other than the Province of Quebec, according to the form of execution of deeds prevailing there, they shall have the same force and effect in the Province of Quebec as if they had been executed in that Province before a Notary; and if such deeds be executed in that Province before a Notary they shall have the same force and effect elsewhere in the Dominion as if they had been executed according to the law in force in such other Province; and copies of such deeds, certified as aforesaid, shall constitute before all courts and for all purposes, *primâ facie* proof of the execution and of the contents of the originals of such deeds respectively, without production of the originals thereof.

To what Assets certain Sections shall apply. Proviso: as to certain Provinces; and as to costs.

116. The operation of sections ten and twenty-nine of this Act, shall extend to all the assets of the Insolvent, of every kind and description, although they are actually under seizure under any ordinary Writ of Attachment, or under any Writ of Execution, so long as they are not actually sold

by the Sheriff or Sheriff's officer under such Writ; but in the Provinces of Nova Scotia and New Brunswick this section shall not apply to any Writ of Execution in the hands of the Sheriff, at the time of the coming into force of this Act; and the rights, liens and privileges, of the seizing or attaching creditor, for his costs upon any such writ, shall be the same as they were previous to the passing of this Act, in the Province in which such writ shall have issued.

1.—THE OPERATION OF SECTIONS TEN AND TWENTY-NINE.

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Notices under this Act, how given.

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1.—THE ASSIGNEE SHALL MAIL NOTICES TO FOREIGN CREDITORS.

We should presume the object of mailing notices of meetings to a foreign creditor, is to enable him, or his representative, to attend. But as only two weeks notice is required to be given,

we fail to understand how a foreign creditor living in Europe, can be expected to receive it in time, to attend either in person or by deputy. It would have been perhaps better if the Act had provided for an interval of six weeks, instead of a month, between the appointment of an Assignee and the first meeting of the creditors, so as to permit of foreign creditors being represented on that occasion. In France the delay given to the foreign creditors for this purpose, is regulated by the distance of their domicile from that of the Insolvent. For instance, two months to those living in England, and four months to those living elsewhere in Europe, &c. See 2 Boulay-Paty, des Faillites, No. 461.

Draper, Ch. J., of Ontario, held that the mailing of notices to creditors, provided by sec. 11, sub. sec. 1 of the Act of 1864, which was similar to the above sec. did not apply in application for a confirmation of a discharge, or of a consent to a discharge, or a discharge after a year from the assignment, or attachment. L. J. for 1866, p. 242.

How questions at Meetings of Creditors shall be decided.

118. All questions discussed at meetings of creditors shall be decided by the majority in number of all creditors for sums of one hundred dollars and upwards, present or represented at such meeting, and representing also the majority in value of such creditors, unless herein otherwise specially provided; but if the majority in number do not agree with the majority in value, the views of each section of the creditors shall be embodied in resolutions, and such resolutions with a statement of the vote taken thereon, shall be referred to the Judge, who shall decide between them.

Questions as to Number and Value of Creditors Voting, how decided.

119. If for any purpose it beomes necessary to ascertain the proportion of the creditors of an Insolvent who have voted at any meeting or concurred in any act or document, and if it be found that the whole of the creditors holding

claims against an Insolvent for sums of one hundred dollars and upwards, do not represent the proportion in value of the liabilities of the Insolvent subject to be computed in that behalf and required to give validity to such vote, act or documents such proportion may be completed by the votes or concurrence of creditors holding claims of less than one hundred dollars.

See note to § 94 *ante*.

Notice pending delay.

120. Whenever a meeting of creditors cannot be held, or an application made, until the expiration of a delay named herein, notice of such meeting or application may be given pending such delay.

Certain things may be done at First Meeting, though not mentioned in Notice.

121. If the first meeting of creditors which takes place after the expiry of the period of one month from the advertisement of the appointment of an Assignee be called for the ordering of the affairs of the estate generally, and it be so stated in the notices calling such meeting, all the matters and things respecting which the creditors may vote, resolve or order, or which they may regulate under this Act, may be voted, resolved or ordered upon and may be regulated at such meeting, without having been specially mentioned in the notices calling such meeting, notwithstanding anything to the contrary in this Act contained, due regard being had, however, to the proportions of creditors required by this Act for any such vote, resolution, order or regulation.

1.—THE AFFAIRS TO BE TRANSACTED AT FIRST MEETING FOR APPOINTMENT OF ASSIGNEE.

The matters which usually may be decided upon, on that occasion, are the following:—

1. The appointment of the Assignee. Sec. 5.
2. The security to be given by the Assignee. Secs. 32 & 39.
3. The enactment of rules for the guidance of the Assignee. Sec. 38.
4. The appointment of inspectors. Sec. 34.
5. The reception of the report of the Interim Assignee, or Guardian, of the estate. Secs. 3 & 25.
6. The remuneration to be given to the Guardian, Interim Assignee, and the official Assignee. Sec. 52.
7. Upon any offer of composition which may be made by the Insolvent. Sec. 35.
8. The continuance or cessation of the lease of premises occupied by the Insolvent, or deciding that the matter be left to the discretion of the inspectors. Sec. 78.
9. As to necessity for special examination of the Insolvent. Secs. 110 *et seq.*

Form and Attestation of Claims, and before whom to be Attested.

122. The claims of creditors (Form Q) shall be furnished to the Assignee or Interim Assignee as the case may be, in writing, and they shall be attested under oath, taken in Canada before the Assignee or before any Judge, Commissioner for taking affidavits, or Justice of the Peace, and out of Canada before any Judge of a Court of Record, any Commissioner for taking affidavits appointed by any Canadian Court, the Chief Municipal Officer for any town or city, or any British Consul or Vice-Consul, or before any person authorized by any statute of Canada or of any Province therein to take affidavits to be used in any part of Canada.

1.—THE CLAIMS OF CREDITORS SHALL BE FURNISHED TO THE ASSIGNEE.

This sec. is substantially similar to sub. sec. 4 of sec. 11, Act 1864.

Under that law, it has been holden in Montreal, that a creditor had no right to action against the Assignee, for the recovery of his claim, without having proved it before the Assignee, and otherwise complying with the requirements of the statute. The decision was given in the following case: Kuper in 1856 sold a piece of land to Ansel Booth & John C. Booth, the purchasers becoming jointly and severally liable for the price. Ansel Booth died, after bequeathing his estate to his wife. John C. Booth became insolvent; and Stewart, the defendant, was the Assignee. Kuper therefore sued the wife, as the universal legatee of Ansel Booth, and Stewart as the Assignee of John C. Booth, and prayed that as the brothers were jointly and severally liable, the two latter, in their several capacities, might be thus condemned in payment.

Stewart demurred on the ground that by the Insolvent Act of 1864, he was only invested with the estate of John C. Booth, for the benefit of his creditors, and by that law the Plaintiff had in the present case no right of action against him.

The Court (Berthelot J.) sustained the contestation, and held that creditors were bound to proceed with their claims before the Assignee, under the terms of the statute. Cited Bedarride, Faillites, &c., No. 85; 1 Renouard Tr. des Faillites, p. 308. Kuper v. Stewart, 11 L. C. Jur. 85.

Affidavits, before whom to be made.

123. Any affidavit requiring to be sworn in proceedings in insolvency, may be sworn before any Commissioner for taking affidavits, appointed by any of the Courts of Law or of Equity in any of the said Provinces; or before any Judge having civil jurisdiction in any of the said Provinces; and such affidavit may be made by the party interested, or by his agent in that behalf having a personal knowledge of the matters therein stated.

Set offs, how allowed.

124. The Statutes of set-off shall apply to all claims in insolvency and also to all suits instituted by an Assignee for the recovery of debts due to the Insolvent, in the same manner and to the same extent as if the Insolvent were plaintiff

or defendant, as the case may be, except in so far as any claim for set-off shall be affected by the provisions of this Act respecting frauds or fraudulent preferences.

1.—THE STATUTES OF SET-OFF SHALL APPLY.

This section must be regulated by sec. 91 *ante*.

By that sec. any transfer of a debt made within thirty days of the assignment, or writ of attachment, for the purpose of enabling the debtor to set-off against his liability, is null; if at the time he knew, or had probable cause for believing, the Insolvent to be unable to meet his engagements.

In England, under the stats. 5 Geo. 2, c. 30, s. 28, and 46 Geo. 3, c. 135, sec. 4 (both now repealed), they were also null, if at the time the debtor was aware of the insolvency, although no commission might have then issued. Arch. Bank. 146. By the act 12 & 13 Vic., c. 106, s. 171, a knowledge of the trader having stopped payment, is no longer an ingredient on this point. A transfer for this purpose is therefore valid, under that law, if made before notice of an act which is called an act of bankruptcy. *Ibid.* That is to say, before knowledge of the Insolvent having absconded, or having secreted his property, or being arrested for debt, or having his effects seized under execution, &c.

Service of Papers under this Act.

125. One clear day's notice of any petition, motion, order, or rule, shall be sufficient if the party notified resides within fifteen miles of the place where the proceeding is to be taken, and one extra day shall be sufficient allowance for each additional fifteen miles of distance between the place of service and the place of proceeding; and service of such notice shall be made in such manner as is now prescribed for similar services in the Province within which the service is made.

1.—ONE CLEAR DAY'S NOTICE SHALL BE SUFFICIENT.

Provided it be not a holiday, &c. See note to sec. 143 *post*; and note 3 to sec. 15 *ante*.

Commissions for Examination of Witnesses.

126. The Judge shall have the same power and authority in respect of the issuing and dealing with commissions for the examination of witnesses, as are possessed by the ordinary Courts of Record in the Province in which the proceedings are being carried on, and may also on petition of either of the parties to a contestation before an Assignee, order the issue of such a commission by the Assignee.

Subpœnas to Witness.

127. In any proceeding or contestation in insolvency, the Court or Judge, or the Assignee as the case may be, may order a writ of *subpœna ad testificandum* or of *subpœna duces tecum* to issue, commanding the attendance as a witness of any person within the limits of Canada.

Service of Process, etc.

128. All rules, writs of subpœna, orders and warrants, issued by any Judge, Court, or Assignee in any matter or proceeding under this Act, may be validly served in any part of Canada upon the party affected or to be affected thereby; and the service of them, or any of them, may be validly made in such manner as is now prescribed for similar services in the Province within which the service is made; and the person charged with such service shall make his return thereof and on oath, or, if a Sheriff or Bailiff in the Province of Quebec, may make such return under his oath of office.

THE FORM OF SERVICE.

But while the form of service may be that prevailing where the service is made, it will be remembered, the delay given must be regulated by sec. 125 *ante*.

Disobedience of Writs and Process, how punishable. Proof of Default.

129. In case any person so served with a writ of *subpœna* or with an order to appear for examination, does not appear according to the exigency of such writ or process, the Court or the Judge on whose order or within the limits of whose territorial jurisdiction the same is issued, may, upon proof made of the service thereof, and of such default, if the person served therewith has his domicile within the limits of the Province within which such writ or process issued, constrain such person to appear and testify, and punish him for non-appearance or for not testifying in the same manner as if such person had been summoned as a witness before such Court or Judge, in an ordinary suit; and if the person so served and making default, has his domicile beyond the limits of the Province within which such writ or process issued, such Court or Judge may transmit a certificate of such default to any of Her Majesty's Superior Courts of Law or Equity in that part of Canada in which the person so served may reside, and the Court to which such certificate is sent, shall thereupon proceed against and punish such person so having made default, in like manner as it might have done if such person had neglected or refused to appear to a writ of subpœna or other similar process issued out of such last mentioned Court; and such certificate of default signed by the Court, Judge or Assignee before whom default was made, and copies of such writ, process, and of the return of service thereof, certified by the Clerk of the Court in which the order of transmission is made, shall be *primâ facie* proof of such writ or process, service, return, and of such default.

Expenses must be tendered to Person Summoned as a Witness, etc.

130. No such certificate of default shall be so transmitted, nor shall any person be punished for neglect or refusal to attend for examination in obedience to any such subpœna or other similar process, unless it be made to appear to the Court or Judge transmitting, and also to the Court receiving such certificate, that a reasonable and sufficient sum of money, according to the rate *per diem*, and per mile allowed to witnesses by the law and practice of the Superior Courts of Law within the jurisdiction of which such person was found, to defray the expenses of coming and attending to give evidence, and of returning from giving evidence, had been tendered to such person at the time when the writ of subpœna, or other similar process, was served upon him.

Forms under the Act.
Construction of Statements.

131. The forms appended to this Act, or other forms in equivalent terms, shall be used in the proceedings for which such forms are provided; and in every contestation of a claim, collocation, or dividend, or of an application for a discharge, or for confirming or annulling a discharge, the facts upon which the contesting party relies, shall be set forth in detail, with particulars of time, place and circumstance, and no evidence shall be received upon any fact not so set forth; but in every petition, application, motion, contestation, or other pleading under this Act, the parties may state the facts upon which they rely, in plain and concise language, to the interpretation of which the rules of construction applicable to such language in the ordinary transactions of life shall apply.

See note 1 to sec. 71 *ante*.

Foreign Discharges not to bar Debts contracted in Canada.

132. No plea or exception alleging or setting up any discharge or certificate of discharge, granted under the Bankrupt or Insolvent Law, of any country whatsoever beyond the limits of Canada, shall be a valid defence or bar to any action instituted in any Court of competent jurisdiction in Canada, for the recovery of any debt or obligation contracted within such limits.

1.—CERTIFICATE OF DISCHARGE OF A FOREIGN COUNTRY NO BAR TO RECOVERY OF CLAIMS DUE HERE.

This accords with the English law. Arch. Bank. 415. But a certificate obtained by a bankrupt in a foreign country, will be a bar to an action in this country for a debt contracted in the foreign country. *Ibid.*

In the United States it is held that a discharge given there, under the Insolvent law, does not affect foreign debts unless proved. That is to say, unless the claims be filed, and proved by the claimants against the estate. Avery & Hobbs, Bank. Law, U. S. 243. May v. Breed 7 Cush. 15; in this case there is a full and careful discussion of the question.

In France, the confirmation of a deed of composition and discharge, releases an Insolvent from all foreign claims, stated in the schedule; whether proved or not. 2 Boulay-Paty (Boileux) des Faillites, &c., 121.

As to amendments in proceedings under this Act.

133. The rules of procedure as to amendments of pleadings, which are in force at any place where any proceedings under this Act are being carried on, shall apply to all proceedings under this Act; and any Court or Judge, or Assignee, before whom any such proceedings are being carried on, shall have full power and authority to apply the appropriate rules as to amendments, to the proceedings so pending before him; and no pleading or proceeding shall be void by reason of any irregularity or default which can or may be amended under the rules and practice of the Court.

Provision in case of Death of Insolvent. Representatives, how far liable.

134. The death of the Insolvent, pending proceedings upon a voluntary assignment, or in compulsory liquidation, shall not affect such proceedings, or impede the winding up of his estate; and his heirs or other legal representatives may continue the proceedings on his behalf to the procuring of a discharge, or of the confirmation thereof, or of both; and the provisions of this Act shall apply to the heirs, administrators or other legal representatives of any deceased person who, if living, would be subject to its provisions, but only in their capacity as such heirs, administrators or representatives, without their being held to be liable for the debts of the deceased, to any greater extent than they would have been if this Act had not been passed.

Costs: on what property and in what order chargeable.

135. The costs of the proceedings in Insolvency up to and inclusive of the notice of the appointment of the Assignee, shall be paid by privilege as a first charge upon the assets of the Insolvent; the disbursements necessary for winding up the estate shall be the next charge on the property chargeable with any mortgage, hypothec or lien, and upon the unincumbered assets of the estate respectively, in such proportions as may be justified by the nature of such disbursements, and their relation to the property as being incumbered or not, as the case may be; and the remuneration of the Assignee and the costs of the judgment of confirmation of the discharge of the Insolvent, or of the discharge if obtained direct from the Court, and the costs of the discharge of the Assignee being first taxed by the Judge at the tariff, or if there be no tariff at the same rate as is

usual for uncontested proceedings of a similar character, after notice to the inspectors, or to at least three creditors, shall also be paid therefrom as the last privileged charge thereon.

1.—THE PRIVILEGE OF COSTS.

This sec. makes a material difference to the provisions of the Act of 1864 respecting the privilege on costs. By the latter statute, it was limited to the costs to compel compulsory liquidation; the other costs could only be levied from the assets, and consequently in estates, where the privileged claims, such as that of the landlord, absorbed the assets, there was nothing left for the payment of the Assignee. See Morgan v. Whyte, cited in note to sec. 58 *ante*.

This sec. prevents the repetition of such an injustice.

Provision as to Letters addressed to Insolvent by Post.

136. The Judge shall have the power, upon special cause being shewn before him under oath for so doing, to order the Postmaster at the place of residence of the Insolvent, to deliver letters addressed to him received at such Post Office to the Assignee, and to authorize the Assignee to open such letters in the presence of the Prothonotary or Clerk of the Court of which such Judge is a member; and if such letters be upon the business of the estate, the Assignee shall retain them, giving communication of them however to the Insolvent on request; and if they be not on the business of the estate they shall be re-sealed, endorsed as having been opened by the Assignee, and returned to the Post Office; and a memorandum in writing of the doings of the Assignee in respect of such letters, shall be made and signed by him and by the Prothonotary or Clerk, and deposited in the Court.

1.—TO ORDER POSTMASTER TO DELIVER TO ASSIGNEE, LETTERS ADDRESSED TO INSOLVENT.

A similar right exists in the English and Scotch bankrupt laws. Arch. Bank. 504; Kinnear, Bank. 189.

Provision as to cases in which the Judge or Assignee has a claim on the Estate.

137. If the Judge holds a claim against the estate of an Insolvent, he shall be *ipso facto* disqualified from acting as a Judge in any matter connected with such claim; and in such case the Judge competent to act in matters of insolvency, in any of the counties adjoining that in which the Insolvent has his chief place of business, and who is not disqualified under this section, shall be the Judge who shall have jurisdiction in such matter, in the place and stead of the Judge so disqualified; and if the Assignee to any estate be a claimant thereon as a creditor, or be collocated for any charges, or remuneration, or be the agent, attorney, or representative of any claimant thereon, he shall not hear, award, or determine upon any contestation of his own claim or collocation, or of the claim of the person represented by him, or of any dividend thereon, or upon any contestation or issue raised by him, or by the person represented by him; but in such case such contestation shall be decided by the Judge, subject to appeal as hereinbefore provided; and upon a suggestion being filed before the Judge, or the Assignee, as the case may be, of his disqualification under this section, the Judge or Assignee shall be bound within twenty-four hours thereafter, to declare under his hand, by a writing filed with the Assignee, whether such Judge or Assignee is so disqualified or not, and if he does not, he shall be conclusively held to be so disqualified; and the validity or correcness of such declaration may be contested, in the case of the Judge, by summary petition before the Judge who would be competent to act in the place or stead of the Judge alleged to be disqualified, and in the case of the Assignee, by the Judge.

Rules of Practice and Tariff of Fees in the Province of Quebec; how to be made.

Present Rules, etc., to remain until altered.

138. In the Province of Quebec, rules of practice for regulating the due conduct of proceedings under this Act, before the Court or Judge, and tariffs of fees for the officers of the Court, and for the Advocates and Attorneys practising in relation to such proceedings, shall be made forthwith after the passing of this Act, and when necessary repealed or amended, and shall be promulgated, under or by the same authority and in the same manner as the rules of practice and tariff of fees of the Superior Court, and shall apply in the same manner and have the same effect in respect of the proceedings under this Act, as the rules of practice and tariff of fees of the Superior Court apply to and affect the proceedings before that Court; and Bills of costs upon proceedings under this Act may be taxed and proceeded upon in like manner, as bills of costs may now be taxed and proceeded upon in the said Superior Court; but until such rules of practice and tariff of fees have been made, the rules of practice and tariff of fees in Insolvency, now in force in the said Province, shall continue and remain in full force and effect.

And in the other Provinces.

139. In the Province of Ontario the Judges of the Superior Courts of Common Law, and of the Court of Chancery, or any five of them, of whom the Chief Justice of the Province of Ontario, or the Chancellor, or the Chief Justice of the Common Pleas, shall be one,—in the Province of New Brunswick, the Judges of the Supreme Court of New Brunswick, or the majority of them,—and in the Province of Nova Scotia, the Judges of the Supreme Court

of Nova Scotia, or the majority of them,—shall forthwith make, and frame and settle such forms, rules and regulations as shall be followed and observed in the said Provinces respectively, in the proceedings in insolvency under this Act, and shall fix and settle the costs, fees and charges which shall or may be had, taken or paid in all such cases by or to Attorneys, Solicitors, Counsel, and Officers of Courts, whether for the Officer or for the Crown as a fee for the fee fund or otherwise, and by or to Sheriffs, Assignees or other persons whom it may be necessary to provide for.

Registration of Marriage Contracts of Traders in Quebec. Consequence of Default.

140. In the Province of Quebec every trader having a marriage contract with his wife, by which he gives or promises to give or pay or cause to be paid, any right, thing, or sum of money, shall enregister the same, if it be not already enregistered, within three months from the execution thereof; and every person not a trader, but hereafter becoming a trader, and having such a contract of marriage with his wife, shall cause such contract to be enregistered as aforesaid (if it be not previously there enregistered,) within thirty days from becoming such trader; and in default of such registration the wife shall not be permitted to avail herself of its provisions in any claim upon the estate of such Insolvent for any advantage conferred upon or promised to her by its terms; nor shall she be deprived by reason of its provisions of any advantage or right upon the estate of her husband, to which, in the absence of any such contract, she would have been entitled by law; but this section shall be held to be only a continuance of the second paragraph of section twelve of the Insolvent Act of 1864, and shall not relieve any person from the consequences of any negligence in the observance of the provisions of the said paragraph.

1.—IN DEFAULT OF REGISTRATION, THE WIFE SHALL NOT CLAIM ON ESTATE OF INSOLVENT.

This simply prohibits the wife from claiming on the estate of the husband, under a marriage contract which has not been enregistered within the prescribed delay. It does not prevent her from holding property, when she is separated as to property (*séparée de biens*) from her husband, by this contract, or by a judgment of the Court.

2.—NOR SHALL SHE BE DEPRIVED OF ANY RIGHT.

For instance, if she accepted the promise of a sum of money from her husband, in lieu of her dower, she would be unable to claim it in the event of his insolvency. She may therefore insist upon her dower under the common law.

Certain words in 29 *Vic. c.* 18, *interpreted.*

141. The words "any official assignee," used in the second section of the Act twenty-ninth Victoria, chapter eighteen, are hereby declared to have meant, and to mean, any official assignee whatever, and shall be construed as if they were followed by the words "resident or appointed, in any part of the Province of Canada." But this declaration shall not affect any contestation heretofore determined or now pending respecting the validity of any assignment heretofore made to an official assignee resident in a county or district different from that in which the domicile or place of business of the Insolvent was situate at the time of such assignment.

1.—THE WORDS "ANY OFFICIAL ASSIGNEE."

This sec. is intended to settle the interpretation of the 2nd sec. of the Amendment to the Insolvent Act of 1864. That sec. has been understood, by some of the Judges in Quebec, to permit an Assignee residing elsewhere than in the place of the Insolvent, to officiate; whilst others, in that Province, and those of the Courts of Ontario, sustained an opposite opinion. See note 2 to sec. 5 *ante*.

Certain words in this Act interpreted.

142. The words "before Notaries," or "before a Notary," shall mean executed in notarial form, according to the law of the Province of Quebec; the words "the Judge" shall, in the Province of Quebec, signify a Judge of the Superior Court of the Province of Quebec, having jurisdiction at the domicile of the Insolvent,—in the Provinces of Ontario and New Brunswick a Judge of the County Court of the County or Union of Counties in which the proceedings are carried on,—and in the Province of Nova Scotia a Judge of Probate, —except in cases proceeding in the city of Halifax, in which case they shall mean a Judge of the Supreme Court of Nova Scotia; and the words "the Court," shall, in the Province of Quebec, signify the said Superior Court, and in the Provinces of Ontario and New Brunswick the County Court, and in the Province of Nova Scotia the Supreme Court of Nova Scotia, unless it is otherwise expressed or unless the context plainly requires a different construction.

Other words interpreted. "*Day.*" "*Official Gazette.*" "*Creditor.*" "*Collocated.*"

Application to Companies and Partnerships. "*Board of Trade.*"

143. The word "day" shall mean a juridical day; the words "Official Gazette" shall mean the Gazette which is used in any Province as the official medium of communication between the Lieutenant Governor and the people; the word "Creditor" shall be held to mean every person to whom the Insolvent is liable, whether primarily or secondarily, and whether as principal or surety, and who shall have proved his claim against the estate of an Insolvent in the manner provided by this Act; but no proceeding, discharge,

or composition had or consented to previous to the passing of this Act, and not now the subject of dispute and in litigation on the ground that a creditor voting thereon or a party thereto had not proved his claim shall be held invalid by reason of any such creditor not having previously proved his claim as aforesaid, notwithstanding that such creditor or the claims he represents be requisite to complete the proportion necessary to give validity under this Act to such proceeding, discharge or composition; the word "collocated" shall mean ranked or placed in the dividend sheet for some dividend or sum of money; and all the provisions of this Act shall be held to apply equally to unincorporated trading companies and co-partnerships; and the chief office or chief place of business of such unincorporated trading companies and co-partnerships shall be their domicile or place of business as the case may be for the purposes of this Act; and the words "Board of Trade" in the said Act, are hereby declared to have meant and in this Act shall mean any body of persons openly exercising the ordinary functions of a Board of Trade or Chamber of Commerce whether incorporated or not.

Limitation of Proceedings to set aside anything done under this Act.

144. After the expiration of one year from the appointment of an Assignee, no suit or proceeding shall be instituted or commenced for the setting aside of any Act or proceeding preliminary to such appointment or of such appointment; nor shall any such appointment or the proceedings preliminary thereto be impeached, or the validity thereof put in issue by any pleading in any suit or proceeding; but after the expiration of the said period, as to all persons not previously contesting the same and until set aside by the

decision of a Court of law or of equity, upon a previous contestation thereof, such appointment and the proceedings preliminary thereto, shall be conclusively presumed to be valid and sufficient.

1.—AFTER THE EXPIRATION OF ONE YEAR.

The English law provides no special limitation for acts done under the bankrupt law. That of the United States, creates a limitation of two years. Avery & Hobbs, p. 8.

OF IMPRISONMENT FOR DEBT.

Insolvent in Gaol or on the limits may apply to Judge for discharge.

Proceedings thereon.

145. Any debtor confined in gaol or on the limits in any civil suit who may have made the assignment provided for in the second section of this Act; or against whom process for compulsory liquidation under this Act may have been issued, may at any time after the meeting of creditors provided for in the third Section of this Act, or the appointment of an Assignee under this Act, make application to the Judge of the County or District in which his domicile may be or in which the gaol may be in which he is confined, for his discharge from imprisonment or confinement in such suit; and thereupon such Judge may grant an order in writing directing the Sheriff or Gaoler to bring the debtor before him for examination at such time and place in such County or District as may be thought fit; and the said Sheriff or Gaoler shall duly obey such order, and shall not be liable for any action for escape in consequence thereof, or for any action for the escape of the said debtor from his custody, unless the same shall have happened through his default or negligence:

Examination of Insolvent and Witnesses.

Judge may discharge him if the Examination be satisfactory.

2. In pursuance of such order the said confined debtor and any witnesses subpœnaed to attend and give evidence at

such examination may be examined on oath at the time and place specified in such order before such Judge, and if on such examination it shall appear to the satisfaction of the Judge, that the said debtor has *bonâ fide* made an assignment as required by the tenth Section of this Act, and has not been guilty of any fraudulent disposal, concealment or retention of his estate or any part thereof or of his books and accounts or any material portion thereof, or otherwise in any way contravened the Provisions of this Act, such Judge shall by his order in writing discharge the debtor from confinement or imprisonment, and on production of the order to the Sheriff or Gaoler, the debtor shall be forthwith discharged without payment of any gaol fees; provided always that no such order shall be made in any suit unless it be made to appear to the satisfaction of such Judge that at least seven days notice of the time and place of the said examination had been previously given to the plaintiff in such suit, or his attorney and to the Assignee for the time being;

Minutes of Examination to be kept.
Postponement in certain cases.

3. The minutes of the examination herein mentioned shall be filed in the office of the Clerk of the Court out of which the process issued, and a copy thereof shall be delivered to the Assignee, and if during the examination, or before any order be made the Official Assignee or the appointed Assignee, or the creditor or any one of the creditors at whose suit or suits he shall be in custody, shall make affidavit that he has reason to believe that the debtor has not made a full disclosure in the matters under examination, the Judge may grant a postponement of such examination for a period of not less than seven days nor more than fourteen days, unless the parties consent to an earlier day.

As to any subsequent arrest.

4. After such discharge, in case of any subsequent arrest in any civil suit as aforesaid for causes of action arising previous to the assignment or process for compulsory liquidation, the said debtor may, pending the further proceedings against him under this Act, be forthwith discharged from confinement or imprisonment in such suit, on application to any Judge on producing such previous discharge; provided that nothing in this section contained shall interfere with the imprisonment of the said debtor, in pursuance of any of the provisions of this Act.

1.—DEBTOR MAY APPLY FOR HIS DISCHARGE FROM ARREST.

A similar privilege is granted by the English stat. 12 & 13 Vic. c. 106, s. 99.

OFFENCES AND PENALTIES.

Assignees, Guardians, and Interim Assignees, to be deemed Agents for certain purposes.

146. Every Interim Assignee to whom an assignment is made under this Act, every Guardian appointed under a Writ of Attachment in compulsory liquidation, and every Assignee appointed under the provisions of this Act, is an agent within the meaning of the seventy-sixth and following sections of the *Act respecting Larceny and other similar offences*, and every provision of this Act, or resolution of the creditors, relating to the duties of an Interim Assignee, Guardian or Assignee, shall be held to be a direction in writing, within the meaning of the said seventy-sixth section; and in an indictment against an Interim Assignee, Guardian or Assignee under any of the said sections, the right of property in any moneys, security, matter or thing, may be laid in "the creditors of the Insolvent (*naming him,*) under the Insolvent Act of 1869," or in the name of any Assignee subsequently appointed, in his quality of such Assignee.

1.—OF THE ACT RESPECTING LARCENY.

This Act is 32 & 33 Vic. c. 21.

The following is a copy of the seventy-sixth section of this statute:—

"Whosoever, having been intrusted, either solely, or jointly, with any other person, as a banker, merchant, broker, attorney, or other agent, with any money or security for the payment of

money, with any direction in writing to apply, pay or deliver such money or security or any part thereof respectively, or the proceeds, or any part of the proceeds of such security for any purpose, or to any person specified in such direction, in violation of good faith, and contrary to the terms of such direction, in anywise converts to his own use or benefit, or the use or benefit of any person other than the person by whom he has been so intrusted, such money, security, or proceeds, or any part thereof respectively, and whosoever, having been intrusted, either solely or jointly with any other person, as a banker, merchant, broker, attorney, or other agent, with any chattel or valuable security, or any power of attorney, for the sale or transfer of any share or interest in any public stock or fund, whether of the United Kingdom, or any part thereof, or of this Dominion of Canada, or any Province thereof, or of any British Colony or Possession, or of any foreign state, or in any stock or fund of any body corporate, company or society, for safe custody or for any special purpose without any authority to sell, negociate, transfer or pledge, in violation of good faith, and contrary to the object or purpose for which such chattel, security, or power of attorney has been intrusted to him, sells, negociates, transfers, pledges, or in any manner converts to his own use or benefit, or the use or benefit of any person other than the person by whom he has been so intrusted, such chattel or security, or the proceeds of the same, or any part thereof, or the share or interest in the stock or fund to which such power of attorney relates, or any part thereof, is guilty of a misdemeanor, and shall be liable to be imprisoned in the Penitentiary for any term not exceeding seven years and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement; but nothing in this section contained relating to agents shall affect any trustee in or under any instrument whatsoever, or any mortgagee of any property, real or personal, in respect to any act done by such trustee or mortgagee in relation to the property comprised in or affected by any such trust or mortgage; nor shall restrain any banker, merchant, broker, attorney, or other agent from receiving any money due or to become actually due and payable upon or by virtue of any valuable security, according to the tenor and effect thereof, in such manner as he might have done if this Act had not been passed; nor from selling, transferring, or otherwise disposing of any securities or effects in his possession, upon which he has any lien, claim, or demand, entitling him by law so to do, unless such sale, transfer or other disposal extends to a greater number or part of such securities or effects than are requisite for satisfying such lien, claim or demand."

Certain acts by Insolvents to be Misdemeanors.

147. From and after the coming into force of this Act, any Insolvent who shall do any of the acts or things following with intent to defraud, or defeat the rights of his creditors, shall be guilty of a misdemeanor, and shall be liable, at the discretion of the Court before which he shall be convicted, to punishment by imprisonment for not more than three years, or to any greater punishment attached to the offence by any existing statute:

Not fully Discovering or not Delivering Property, Books, Papers, etc.

If he shall not upon examination fully and truly discover to the best of his knowledge and belief, all his property, real and personal, inclusive of his rights and credits, and how and to whom, and for what consideration, and when he disposed of, assigned or transferred thereof or of any part thereof, except such part has been really and *bonâ fide* before sold or disposed of in the way of his trade or business if any, or laid out in the ordinary expenses of his family, or shall not deliver up to the Assignee all such part thereof as is in his possession, custody or power, (except such portion thereof as is exempt from seizure as hereinbefore provided,) and also all books, papers and writings in his possession, custody or power relating to his property or affairs;

Removing Property.

If within thirty days prior to the execution of a deed of assignment, or the issue of a Writ of Attachment under this Act, he shall with intent to defraud his creditors, remove, conceal, or embezzle any part of his property, to the value of fifty dollars or upwards;

Not denouncing False Claims.

If in case of any person having to his knowledge or belief proves a false debt against his estate, he shall fail to disclose the same to his Assignee within one month after coming to the knowledge or belief thereof;

False Schedule.

If he shall with intent to defraud, wilfully and fraudulently omit from his schedule any effects or property whatsoever;

Withholding Books, etc.

If he shall with intent to conceal the state of his affairs, or to defeat the object of this Act or of any part thereof, conceal, or prevent or withhold the production of any book, deed, paper or writing relating to his property, dealings or affairs;

Falsifying Books, etc.

If he shall with intent to conceal the state of his affairs, or to defeat the object of the present Act, or of any part thereof, part with, conceal, destroy, alter, mutilate or falsify, or cause to be concealed, destroyed, altered, mutilated or falsified, any book, paper, writing or security or document relating to his property, trade, dealings or affairs, or make or be privy to the making of any false or fraudulent entry or statement in or omission from any book, paper, document or writing relating thereto;

Stating Fictitious Losses.

If he shall, at his examination at any time, or at any meeting of his creditors held under this Act, have attempted to account for any of his property by fictitious losses or expenses;

Disposing of Goods not Paid for.

If within the three months next preceding the execution of a deed of assignment, or the issue of a Writ of Attachment in compulsory liquidation, he pawns, pledges, or disposes of, otherwise than in the ordinary way of his trade, any property, goods or effects the price of which shall remain unpaid by him during such three months.

1.—NOT DELIVERING PROPERTY, BOOKS, ETC,

In England, the acts specified in paragraphs two and three are felonies, by 12 & 13 Vic. c. 106, s. 251.

How Offences against this Act shall be tried.

148. All offences punishable under this Act shall be tried as other offences of the same degree are triable in the province where such offence is committed, save that the jury empanelled to try the same shall be a special jury, to obtain which the prosecuting officer is required and authorized to take such proceedings as in a civil case are necessary to obtain such a jury.

Creditors taking consideration for granting Discharge, etc.

149. If any creditor of an Insolvent, directly or indirectly, takes or receives from such Insolvent, any payment, gift, gratuity, or preference, or any promise of payment, gift, gratuity, or preference, as a consideration or inducement to consent to the discharge of such Insolvent, or to execute a deed of composition and discharge with him, or if any creditor knowingly ranks upon the estate of the Insolvent for a sum of money not due to him by the Insolvent or by his estate, such creditor shall forfeit and pay a sum equal to treble the value of the payment, gift, gratuity or preference so taken, received or promised, or treble the amount im-

properly ranked for as the case may be, and the same shall be recoverable by the Assignee for the benefit of the estate, by suit in any competent court, and when recovered, shall be distributed as part of the ordinary assets of the estate.

1.—IF ANY CREDITOR TAKES A GIFT AS INDUCEMENT TO SIGN A DEED OF COMPOSITION.

See note to sec. 108 *ante*.

Punishment of Insolvent receiving Money, etc., and not handing the same to Assignee.

150. If, after the issue of a writ of attachment in insolvency, or the execution of a deed of assignment, as the case may be, the Insolvent retains or receives any portion of his estate or effects, or of his moneys, securities for money, business papers, documents, books of account, or evidences of debt, or any sum or sums of money, belonging or due to him, and retains and withholds from his Assignee, without lawful right, such portion of his estate or effects, or of his moneys, securities for money, business papers, documents, books of account, evidences of debt, sum or sums of money. the Assignee may make application to the Judge, by summary petition and after due notice to the Insolvent, for an order for the delivery over to him of the effects, documents, or moneys so retained; and in default of such delivery in conformity with any order to be made by the Judge upon such application, such Insolvent may be imprisoned in the common gaol for such time. not exceeding one year, as such Judge may order.

1.—IF INSOLVENT RETAINS MONEYS, ETC.

The Act of 1864 did not make any provision for the cases specified in this section. The Amendment Act (29 Vic. c. 18, sec. 29), supplied the omission. The above section is copied from that Act, and under it, it has been held, in Montreal, where an

Insolvent received a sum of money during the interval between date of notice of meeting of creditors and the appointment of an Assignee, and refused to pay it to the Assignee, that this was "retaining and withholding without lawful right," within the meaning of the Act. In *re* Warmington, and Jones, Assignee. 12 L. C. Jur. 237.

Certain Documents to be Evidence.

151. The deeds of assignment and of transfer, or in the Province of Quebec, authentic copies thereof, or a duly authenticated copy of the record of appointment of an assignee, or a copy of the instrument of appointment of the Interim Assignee when he becomes Assignee, certified by the Clerk or Prothonotary of the Court in which such instrument is deposited, under the seal of such Court, according to the mode in which the Assignee is alleged to be appointed, shall be *primâ facie* evidence in all courts, whether civil or criminal, of such appointment, and of the regularity of all proceedings at the time thereof and antecedent thereto.

Contributions to Building and Jury Fund in Quebec.

152. One per centum upon all moneys proceeding from the sale by an Assignee, under the provisions of this Act, of any immoveable property in the Province of Quebec, shall be retained by the Assignee out of such moneys, and shall, by such Assignee, be paid over to the sheriff of the district, or of either of the counties of Gaspé or Bonaventure, as the case may be, within which the immoveable property sold shall be situate, to form part of the Building and Jury Fund of such District or County.

Governor in Council to have certain powers.

153. The Governor in Council shall have all the powers with respect to imposing a tax or duty upon proceedings

under this Act, which are conferred upon the Governor in Council by the thirty-second and thirty-third sections of the one hundred and ninth chapter of the Consolidated Statutes for Lower Canada, and by the Act intituled: *An Act to make provision for the erection or repair of Court Houses and Gaols at certain places in Lower Canada*, (12 Vic., cap. 112.)

REPEAL OF ACTS.

Insolvent Act of 1864, *and Act amending it repealed: saving certain proceedings and matters.*

Proviso: Procedure under this Act to apply and supersede that under Act of 1864.

154. The Insolvent Act of 1864, and the Act to amend the same, passed by the Parliament of the late Province of Canada in the 29th year of Her Majesty's Reign, are hereby repealed, except in so far as regards proceedings commenced and now pending thereunder, and as regards all contracts, acts, matters and things made and done before this Act shall come into force, to which the said Acts or any of the provisions thereof would have applied if not so repealed, and specially such as are contrary to the provisions of the said Acts, having reference to fraud and fraudulent preferences, and to the enregistration of marriage contracts within the Province of Quebec; and as to all such contracts, acts, matters and things, the provisions of the said Acts shall remain in force, and shall be acted upon as if this Act had never been passed; Provided always that as respects matters of procedure merely, the provisions of this Act shall for the future supersede those of the said Acts even in cases commenced and now pending; and all securities given under the said Acts shall remain valid, and may be enforced, in respect of all matters and things falling within their terms, whether before or after this Act shall come into force and specially all securities heretofore given by Official Assignees shall serve and avail hereafter as if given under this Act;

and all other Acts and parts of Acts now in force in any of the said Provinces which are inconsistent with the provisions hereof are also hereby repealed.

Short title, commencement and duration of Act.

155. This Act shall be called and known as "The Insolvent Act of 1869," and shall come into force and take effect on and after the first day of September next, and shall cease to have effect at the end of four years thereafter, save as regards proceedings then in progress.

APPENDIX.

FORM A.

INSOLVENT ACT OF 1869.

In the Matter of an Insolvent.

The Insolvent has made an assignment of his estate to me, and the Creditors are notified to meet at in on the day of at (*eight*) o'clock to receive statements of his affairs, and to appoint an Assignee (*Date and residence of Interim Assignee.*)

(*Signature.*)

Interim Assignee or Guardian.

(*The following is to be added to the notices sent by post.*)

The Creditors holding direct claims and indirect claims, maturing before the meeting, for one hundred dollars each and upwards, are as follows: (*names of Creditors and amounts due*) and the aggregate of claims under one hundred dollars is $

(*Date.*)

(*Signature.*)

Interim Assignee, or Guardian.

FORM B.

Insolvent Act of 1869.

In the Matter of A. B., an Insolvent.

SCHEDULE OF CREDITORS.

1. Direct Liabilities.

NAME.	RESIDENCE.	NATURE OF DEBT.	AMOUNT.		TOTAL.	

2. Indirect Liabilities, maturing before the day fixed for the first meeting of creditors.

NAME.	RESIDENCE.	NATURE OF DEBT.	AMOUNT.	

3. Indirect Liabilities, maturing after the day fixed for the first meeting of creditors.

NAME.	RESIDENCE.	NATURE OF DEBT.	AMOUNT.	

4. Negotiable Paper, the holders of which are unknown.

DATE.	NAME OF MAKER.	NAMES LIABLE TO INSOLVENT.	WHEN DUE.	AMOUNT.	

FORM C.

INSOLVENT ACT OF 1869.

This assignment made between of the first part, and of the second part, witnesses,

(*or*)

On this day of before the undersigned notaries came and appeared of the first part, and of the second part, which said parties declared to us, Notaries :—

That under the provisions of "The Insolvent Act of 1869," the said party of the first part, being insolvent, has voluntarily assigned and hereby does voluntarily assign to the said party of the second part, accepting thereof as Interim Assignee under the said Act, and for the purposes therein provided, all his estate and effects, real and personal, of every nature and kind whatsoever.

To have and to hold to the party of the second part as Interim Assignee for the purposes and under the Act aforesaid.

In witness whereof, &c.

(*or*)

Done and passed, &c.

FORM D.

INSOLVENT ACT OF 1869.

In the Matter of A. B., an Insolvent.

This deed of transfer made under the provisions of the said Act between (C. D.,) Interim Assignee to the estate of the said Insolvent of the first part; and (E. F.,) of the second part, witnesses:

That whereas by a resolution of the creditors of the Insolvent, duly passed at a meeting thereof duly called and held at on the day of , the said party of the second part was duly appointed Assignee to the estate of the said Insolvent: Now therefore these presents witness that the said party of the first part, in his said capacity, hereby transfers to the said party of the second part the estate and effects of the said Insolvent, in conformity with the provisions of the said Act; and for the purposes therein provided.

In witness whereof, &c.

(*This form may be adapted in the Province of Quebec to the notarial form of execution of documents prevailing there.*)

FORM D D.

INSOLVENT ACT OF 1869.

In the Matter of , an Insolvent.

This instrument witnesseth, that a meeting of the Creditors of the Insolvent having been duly called by advertisement, to be held at , in , at o'clock, this day, for the appointment of

an Assignee to the Insolvent's estate, such meeting was duly held, and was duly appointed thereat to be such Assignee (*or* no appointment of Assignee was made at such meeting; *or*, no meeting was held by reason of no creditor attending such meeting *or* the appointment to be such Assignee made at the said meeting became of no effect by reason of his refusal to accept the same) by means whereof the said (*the Interim Assignee*) became Assignee to the said estate.

(*Place*, *date.*)

Signatures of Chairman and of Creditors or of Interim Assignee.

The said (*Interim Assignee*) being duly sworn deposeth that the foregoing declaration is true; and he hath signed.

Sworn before me at this
Judge

FORM E.

INSOLVENT ACT OF 1869.

To (*name residence and description of Insolvent.*)

You are hereby required, to wit, by A. B., a creditor for the sum of $ (*describe in a summary manner the nature of the debt*), and by C. D., a creditor, &c., to make an assignment of your estate and effects under the above Act, for the benefit of your creditors.

(*Place*, *date.*)

(*Signatare of Creditor or Creditors.*)

FORM F.

INSOLVENT ACT OF 1869.

CANADA,
PROVINCE OF
District of

A. B.———(*name, residence, and description.*)
Plaintiff.

C. D.———(*name, residence, and description.*)
Defendant.

I, A. B.———(*name, residence, and description*) being duly sworn, depose and say:

1. I am the Plaintiff in this cause (*or* one of the Plaintiffs, *or* the clerk, *or* the agent of the Plaintiff in this cause duly authorized for the purposes hereof;)

2. The defendant is indebted to the Plaintiff (*or as as the case may be*) in the sum of dollars currency for, (*state concisely and clearly the nature of the debt*);

3. To the best of my knowledge and belief the defendant is insolvent within the meaning of the Insolvent Act of 1869, and has rendered himself liable to have his estate placed in compulsory liquidation under the said Act; and my reasons for so believing are as follows:

(*state concisely the facts relied upon as rendering the debtor Insolvent and as subjecting his estate to be placed in compulsory liquidation.*)

And I have signed; (*or* I declare that I cannot sign.) this day of 18 .

and if the deponent cannot sign, add —the foregoing affidavit having been first read over by me to the deponent.

FORM G.

INSOLVENT ACT OF 1869.

CANADA, PROVINCE OF *District of* } VICTORIA, *by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.*

To the Sheriff of our District (*or* County) of

No. GREETING:

WE command you at the instance of to attach the estate and effects, moneys and securities for money, vouchers, and all the office and business papers and documents of every kind and nature whatsoever, of and belonging to if the same shall be found in (*name of district or other territorial jurisdiction*) and the same so attached, safely to hold, keep and detain in your charge and custody, until the attachment thereof, which shall be so made under and by virtue of this Writ, shall be determined in due course of Law,

We command you also to summon the said to be and appear before Us, in our Court for at in the County (*or* District) of on the day of to show cause, if any he hath, why his estate should not be placed in liquidation under the Insolvent Act of 1869, and further to do and receive what, in our said Court before Us, in this behalf shall be considered; and in what manner you shall have executed this Writ, then and there certify unto us with your doings thereon, and every of them, and have you then and there also this Writ.

IN WITNESS WHEREOF, We have caused the Seal of our said Court to be hereunto affixed, at aforesaid, this day of in the year of our Lord, one thousand eight hundred and sixty- in the year of our Reign.

FORM H.

INSOLVENT ACT OF 1869.

A. B.,
Plff.
C. D.,
Deft.

A writ of attachment has issued in this cause.

(*Place*, *date.*)

(*Signature.*)

Sheriff.

FORM I.

INSOLVENT ACT OF 1869.

In the Matter of
A B. (*or* A. B. & Co.)
an Insolvent.

I, the undersigned (*name and residence*), have been appointed assignee in this matter.

Creditors are requested to file their claims before me, within one month.

(*Place*, *date.*)

(*Signature.*)

Assignee.

FORM K.

INSOLVENT ACT OF 1869.

In the Matter of A. B.,
an Insolvent.

In consideration of the sum of $ whereof quit; C. D., Assignee of the Insolvent, in that capacity hereby sells and assigns to E. F., accepting thereof, all claim by the Insolvent against G. H. of (*describing the Debtor*) with the evidences of debt and securities thereto appertaining, but without any warranty of any kind or nature whatsoever.

C. D., *Assignee.*
E. F.

FORM L.

This deed, made under the provisions of the Insolvent Act of 1869, the day of &c., between A. B. of &c., in his capacity of Assignee of the estate and effects of an Insolvent, under a deed of assignment executed on the day of at in and of a release made and executed on the day of in , (*or under an order of the Judge made at on the day of*) of the one part, and D. D., of &c., of the other part, witnesseth: That he, the said A. B., in his said capacity, hath caused the sale of the real estate hereinafter mentioned, to be advertised as required by law, and hath adjudged (*or* and hath offered for sale pursuant to such advertisement, but the bidding therefor being insufficient did withdraw the same from such sale, and hath since by authority of the Creditors agreed to sell) and doth hereby grant, bargain, sell and confirm the same, to wit: unto the said C. D. his heirs and assigns for ever, all (in Ontario, Nova Scotia and New Brunswick, *insert* "*the rights and interests of the Insolvent in*") that certain lot of land, (&c., *insert here a description of the property sold*): To have and to hold the same, with the appurtenances thereof, unto the said C. D., his heirs and assigns for ever. The said sale is so made for and in consideration of the sum of $ in hand paid to the said C. D. to the said A. B., the receipt whereof is hereby acknowledged (*or* of which the said C. D. hath paid to the said A. B the sum of the receipt whereof is hereby acknowledged), and the balance, or sum of $ the said C. D. hereby promises to pay the said A. B. in his said capacity, as follows, to wit—(*here state the terms of payment*)—the whole with interest payable and as security for the payments so to be made, the said C. D. hereby specially mortgages and hypothecates to

and in favour of the said A. B. in his said capacity, the lot of land and premises hereby sold. In witness, &c.

A. B. [L. S.]
Signed, sealed, and delivered C. D. [L. S.]
in the presence of
E. F.

FORM M.

INSOLVENT ACT OF 1869.

In the Matter of
A. B. (*or* A. B. & Co.,)
an Insolvent

A dividend sheet has been prepared, open to objection, until the day of after which dividend will be paid.

(*Place*, *date.*)

(Signature of Assignee.)

FORM N.

INSOLVENT ACT OF 1869.

CANADA, } In the (*name of Court*)
PROVINCE OF } In the Matter of A. B. (*or*
District (*or County*) of } A. B. & Co.), an Insolvent.

The undersigned has filed in the office of this Court a consent by his creditors to his discharge (*or* a deed of composition and discharge executed by his creditors), and on the day of next, he will apply to the said Court (*or* to the Judge of the said Court, *as the case may be*) for a confirmation of the discharge thereby effected.

(*Place*, *date.*)

(Signature of Insolvent, or of his Attorney *ad litem.*)

FORM O.

INSOLVENT ACT OF 1869.

CANADA, PROVINCE OF District (*or County*) of	In the (*name of Court*) In the Matter of A. B., an Insolvent.

To the said Insolvent.

Take notice that the undersigned creditor hereby requires you to file in the office of this Court, the consent of your creditors, (*or* the deed of composition and discharge executed by them,) under which you claim to be discharged under the said Act; and on the day of next, at ten of the clock in the forenoon or as soon as counsel can be heard, the undersigned will apply to the said Court (*or* to the Judge of the said Court, *as the case may be*) for the annulling of such discharge.

(*Place*, *date.*)

(Signature of Creditor, or of his Attorney *ad litem.*)

FORM P.

INSOLVENT ACT OF 1869.

CANADA, PROVINCE OF District (*or County*) of	In the (*name of Court.*) In the Matter of A. B., (*or* A. B. & Co.) an Insolvent.

On the day of next, the undersigned will apply to the said Court (*or* the Judge of the said Court, *as the case may be*) for a discharge under the said Act.

(*Place*, *date.*)

(Signature of the Insolvent, or his Attorney *ad litem.*)

FORM Q.

INSOLVENT ACT OF 1969.

In the Matter of

A. B.,
An Insolvent, and
C. D.,
Claimant.

I, C. D., of , being duly sworn in depose and say:

1. I am the claimant (*or*, the duly authorized agent of the claimant in this behalf, and have a personal knowledge of the matter hereinafter deposed to, *or* a member of the firm of claimants in the matter, and the said firm is composed of myself and of E. F., of)

2. The Insolvent is indebted to me (*or* to the claimant) in the sum of dollars, for (*here state the nature and particulars of the claim, for which purpose reference may also be made to accounts or documents annexed.*)

3. I (*or* the claimant) hold no security for the claim, (*or* I *or* the claimant) hold the following, and no other, security for the claim namely: (*state the particulars of the security.*)

To the best of my knowledge and belief, the security is of the value of dollars.

Sworn before me at
this day of } And I have signed.

RULES AND ORDERS

AND

TARIFF OF FEES,

Made by the Judges of the Superior Court for Lower Canada, under and by virtue of the Statute 27 and 28 Vict. cap. 17, intituled: "An Act respecting Insolvency."

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1. There shall be assigned in the Court House of each Judicial District at which the sittings of the Superior Court are held, two rooms for matters in Insolvency, one in which the sittings of the Judge shall be held, and the other for the Office of the Clerk in Insolvency.

2. All judicial proceedings in Insolvency shall be had and conducted in the said Court Room alone, and not elsewhere; and the sittings of the Judge shall commence at 11 A. M., or at such hour as the Judges or Judge in each District shall hereafter appoint, and shall continue till the business of the day shall be completed, or until the Judge shall adjourn the same.

3. The Clerk's Office shall be kept open every juridical day, from 9 A. M. to 4 P. M., and shall be attended during that time by a Clerk appointed by the District Prothonotary, and who shall be known as "The Clerk in Insolvency."

4. To ensure regularity of proceedings at the sittings of the Judges, the business shall be conducted in the following order:

1. Meetings of Creditors;
2. Motions;
3. Rules Nisi;
4. Petitions, except as hereinafter mentioned;
5. Proceedings on applications for discharge of Insolvents;
6. Proceedings on applications for discharge of Assignee;
7. Appeals.

5. Proceedings before a Judge or Court may be conducted by the Insolvent himself, or by any party having interest therein, or by their Attorney *ad litem*, admitted to practice in Lower Canada, and by no other person.

6. All Motions, Petitions and Claims, and all papers in the nature of pleadings in Insolvency shall be intituled: In Insolvency. for the District of.....In the matter of.....Insolvent, and..... Claimant, Petitioner or Applicant, as the case may be, plainly written, without interlineations or abbreviations of words; and the subject or purpose thereof shall be plainly and concisely stated. They shall also be subscribed by the Petitioner, Applicant or Claimant, or by his Attorney *ad litem* for him. And they shall be subject to the ordinary rules of procedure of the Superior Court in respect of similar papers, as regards the names and designations of the parties, and the mode in which they shall be docketed and filed.

7. No paper of any description shall be received or filed in any case, unless the same shall be properly numbered and intituled in the case or proceeding to which it may refer or belong; and be also endorsed with the general description thereof, and with the name of the party or his Attorney *ad litem* filing the same.

8. In all appealable matter in dispute, the pretensions of the parties shall be set forth in writing, in a clear, precise and intelligible manner, and the notes of the verbal evidence taken before the Assignee shall be plainly written, shall be signed by the witness, if he can write and sign his name, and shall be certified by the Assignee as having been sworn before him. And in the event of an appeal, the Assignee shall make and certify a transcript from his Register, of the proceedings before him in the matter appealed from. And he shall also make and certify a list of the documents composing such proceedings and appertaining thereto, and shall annex such transcript and list to such documents with a strong paper or parchment cover, before producing the record before the Judge, as required by the said Act.

9. All proceedings before a Judge or Court shall be entered daily, in order of date, in a docket of proceedings, to be kept by the Clerk for each case; and shall from time to time, and until the close of the Estate, be fairly transcribed in Registers suitable therefor, which shall be kept and preserved by the Prothonotary, in the same manner as the Registers of proceedings of the Superior Court.

10. No demand, Petition or Application of which notice is required to be given, either by the provisions of the said Act or by an order of the Judge or Court, shall be heard until after such notice shall have been given, and due return thereof made and filed in the case.

11. Except where otherwise limited and provided by the said Act, and upon good cause shewn, the time for proceeding after notice thereof has been given, may be enlarged by the Judge or Court whenever the rights of parties interested may seem to require it for the purposes of justice.

12. Whenever a particular number of days is prescribed for the doing of an Act in Insolvency, the first and last day shall not be computed, nor any fractions of a day allowed; and when the last day shall fall upon a Sunday or Holiday, the time shall be enlarged to the next juridical day.

13. All affidavits of indebtedness made by a creditor or by the clerk or agent of a creditor, shall set forth the particulars and nature of the debt, with the same degree of certainty and precision as is required in affidavits to hold to bail in civil process in the Courts of Lower Canada.

14. All Writs of Attachment issued under the said Act, shall, as issued, be numbered and entered successively by the Clerk in a Book, to which there shall be an Index, and to which access for examination or extract shall be had *gratis*, at all times during office hours.

15. Every such Writ shall describe the parties thereto, in the same manner as they are described in the said affidavits of debt; and the Declaration accompanying the said Writ, shall be similar in its form to the Declarations required to be filed in ordinary suits in the Superior Court.

16. No such Writ shall issue until after the affidavit of debt upon which the Writ is founded, shall have been duly filed in the Clerk's Office.

17. All services of Writs, Rules, Notices, Warrants and proceedings in Lower Canada, except otherwise specially prescribed by the said Act, may be made by a Bailiff of the Superior or Circuit Court, whose certificates of service shall be in the form required for service of process in the said Courts; or by any literate person, who shall certify his service by his affidavit; and in either case, the manner, place and time of such service shall be described in words, and also the distance from the place of service to the place of proceeding.

18. All services of Writs, Rules, Notices, Warrants or other proceedings, shall be made between the hours of 8 A. M. and 7 P. M., unless otherwise directed by a Judge or Court upon good cause shewn.

19. Writs of Attachment need not be called in open Court, but shall be returned on the return day into the Clerk's Office, and shall be there filed for proceedings thereon, as may be advised or directed.

20. Every day, except Sundays and Holidays, shall be a juridical day for the return of said Writs, and for judicial and Court proceedings.

21. The Sheriff to whom the Writ of Attachment shall be directed, shall not be required to make any detailed Inventory or *procès verbal* of the effects or articles by him attached under such Writ; but a full and complete Inventory of the Insolvent's estate, so attached by the Sheriff, shall be made by the Assignee or person who shall be placed in possession thereof as guardian under such Writ; by sorting and numbering the books of account, papers, documents and vouchers of the estate, and entering the same, with the other assets and effects thereof, in detail, in a book for the same, which shall be called "The Inventory of the Estate of.....," and which shall be filed by the said Assignee or person in possession, on the

return day of the said Writ, as required by the said Act; and the said Inventory shall be open for examination or extract at all times during office hours, *gratis*.

22. Immediately upon the execution of the voluntary deed or instrument of assignment to the Assignee, he shall give notice thereof by advertisement in the form D of the said Act, requiring, by such notice, all Creditors of the Insolvent to produce before him, within two months from the date thereof, their claims, specifying the security therefor, with the vouchers in support of such claims, as required by such notice.

23. The Clerk shall prepare for the Judge or Court, a list of matters pending, or ready and fixed for proceeding on each day, following therein the order of procedure prescribed by the 4th Rule, which list shall be communicated to the Judge on the previous day.

24. The record of proceedings in each case shall at all times during office hours, be accessible, at the Clerk's Office, to Creditors and others in interest in such cases, for examination or extract therefrom, *gratis*. And in like manner the minutes of meetings of Creditors, and the registers of proceedings, together with the claims made and the documents in possession of the Assignee, shall also be accessible to Creditors and others in interest in the case, at convenient hours, daily, to be appointed by the said Assignee.

25. The Assignee shall, from time to time, under order of date, and within twenty-four hours after the proceedings had before him, file in the said Clerk's Office, a clear copy under his signature as such Assignee, of such proceedings, together with a copy of the several newspapers and Official Gazette, in which he shall have caused notices of such proceedings to be advertised, which said copy and newspapers shall form part of the record of proceedings of the particular case.

26. The Assignee shall, on the third juridical day of each month, after he shall have commenced to deposit Estate moneys in a Bank or Bank Agency, as required by the said Act, file of record in the case an account of the Estate, shewing the balance thereof in his hands, or under his control, made up to the last day of the preceding month. And no moneys so deposited shall be withdrawn without a special order of the Court, entered in the docket of proceedings in the case, or upon a dividend sheet prepared and notified, as required by the said Act, or unless otherwise ordered by the Creditors, under the powers conferred upon them by the said Act.

TARIFF OF FEES

IN INSOLVENCY,

FOR THE PROVINCE OF QUEBEC.

IN PROCEEDINGS FOR COMPULSORY LIQUIDATION.

ON BEHALF OF THE PLAINTIFFS,

IF NOT CONTESTED:

	$ cts
To the Prothonotary for Writ of Attachment,...	1 80
Do. Copy of Writ,...	0 30
Sheriff for Warrant,	2 50
Copies of Warrant, each	0 50
All proceedings by the Sheriff or his Agent or Messenger in the seizure and return, exclusive of Mileage,...	2 00
Guardian, per day,	1 00
Do. Making up Inventory and Statements, to be subject to taxation by the Judge:	
To the Prothonotary on return of Writ,	5 00
Crier's Fee on Return,	0 80
To the Prothonotary for Copy of Order for Meeting,	0 50
To the Prothonotary for Meeting,	1 00
To the Prothonotary for each Copy of Judgment appointing Official Assignee,	0 50
Attorney's Fee for conducting proceedings to appointment of Official Assignee,	30 00

IF CONTESTED, ADDITIONAL FEES:

	$ cts
To the Prothonotary on Inscription,	2 00
To the Prothonotary on every Witness examined for Plaintiff, exceeding two in number,	0 30
And for each subsequent Deposition exceeding 400 words in length, for every 100 words,	0 10
Attorney's Fee, additional,	20 00
Counsel Fee at Enquête,	10 00

ON BEHALF OF THE DEFENDANTS,

IF NOT CONTESTED:

Attorney's Fee for appearance,	10 00

IF CONTESTED, ADDITIONAL FEES:

To the Prothonotary on filing Petition in Contestation,	6 00
On every Witness examined for Defendant, exceeding two in number,	0 30
And for each subsequent deposition exceeding 400 words in length, for every 100 words,	0 10
Attoruey's Fee, additional,	20 00
Counsel Fee at Enquête,	10 00

ON VOLUNTARY ASSIGNMENTS.

To the Prothonotary for Filing and Entering Deed,	2 00

ON PETITIONS, OTHER THAN PETITIONS IN APPEAL, IN CONTESTATION OF PROCEEDINGS FOR COMPULSORY LIQUIDATION, OR FOR EXAMINATION OF DEBTOR:

To the Petitioner's Attorney on every Petition, not contested,	5 00
If contested, without Enquête,	10 00
If contested, with Enquête,	15 00
To the Respondent's Attorney—	
If contested, without Enquête,	8 00
If contested, with Enquête,	12 00

	$ cts
To the Prothonotary—	
Filing Petitions,.....	2 00
Copy of Order,.....	0 50
If contested on Filing Contestation, ...	2 00
If there be an Enquête, for every Deposition,.....	0 30
For all words over 400 in any Deposition, per 100, ...	0 10

ON PETITIONS IN APPEAL TO A JUDGE:

To the Assignee for transcript of Record and making up Record and attendance before the Judge, ...	5 00
To the Prothonotary—	
Filing Petition, ...	2 00
Remission of Record, ...	1 00
To the Attorney for the Petitioner—	
If not contested,.....	10 00
If contested, ...	20 00
To the Attorney for the Respondent,.....	15 00

ON PETITIONS FOR ORDER FOR EXAMINATION OF DEBTOR OR FOR OTHER PERSONS RESPECTING THE ESTATE AND EFFECTS OF THE INSOLVENT:

To the Petitioner's Attorney, ...	2 50
To the Prothonotary for order to serve, ...	0 50

ON CLAIMS.

To the Attorneys—	
For every Chirography Claim, without security, ...	1 00
For every Chirography Claim, with security,.....	2 00
For every Hypothecary Claim, if not contested,.....	5 00
On every claim contested, without Enquête—	
Addditional—To Claimant's Attorney, ...	10 00
To Contestant's Attorney,.....	10 00
With Enquête—	
To Claimant's Attorney, ...	20 00
To Contestant's Attorney,.....	20 00
To the Assignee—	
On every Chirography Claim and Hypothecary Claim, not contested,.....	0 10
For every Witness examined on the Contestation of a Claim,.....	0 25
On Inscription of Contestation for Argument,.....	2 00

	$ cts
On Contestation of Dividend Sheets—	
The same Fees and Disbursements to Counsel and to Assignee as on Contestation of Claim.	
On application for Discharge by the Court, for Confirmation of Discharge, or for annulling Discharge :	
To the Applicant's Attorney—	
If not contested,..	15 00
If contested, without Enquête,..	25 00
If contested, with Enquête,..	35 00
To the Respondent's Attorney—	
If contested, without Enquête,..	15 00
If contested, with Enquête,..	25 00
To the Prothonotary—	
Filing Application, ..	2 00
Every Deposition,..	0 30
All words over 400 in each Deposition, per 100,..	0 10

MISCELLANEOUS.

To the Attorneys, Prothonotaries and Bailiffs, Fees and Disbursements on all Rules, Motions, Copies of Rules, Judgments, and Orders, Commissions *rogatoires*, and other incidental matters according to the same rates as are allowed by the present Tariff in first class actions in the Superior Court.

All necessary Disbursements for Advertisements and Notices.

GENERAL ORDER OF DECEMBER, 1864

AND

TARIFF OF FEES

FOR INSOLVENCY PROCEEDINGS IN UPPER CANADA,

Promulgated by the Judges of the Superior Courts of Common Law, and of the Court of Chancery, under 27 *and* 28 *Victoria, c* 17.

ORDER.

WHEREAS it is provided by the Insolvent Act of 1864, amongst other things, that the Judges of the Superior Courts of Common Law, and of the Court of Chancery in Upper Canada, or any of them of whom the Chief Justice of Upper Canada, or the Chancellor, or the Chief Justice of the Common Pleas, shall be one, shall have power to fix and settle the costs, fees and charges which shall be had, taken or paid, in all cases and proceedings under the said Act, by or to attorneys, solicitors, counsel, officers of Courts, whether for the officers or for the Crown, as a fee for the fee fund, or otherwise, sheriffs, assignees, or other persons, whom it may be necessary to provide for;

And whereas the Chief Justice of Upper Canada, and the Judges of the Superior Courts of Common Law and Equity, at Toronto, have assumed the duty so imposed upon them;

In pursuance, therefore, of the power so contained in the Insolvent Act of 1864, the following table of costs has been framed by the Chief Justice and Judges, and it is hereby declared, determined, and adjudged, that all and singular the costs and fees mentioned in the said table, and no other or greater, shall be allowed on taxation, or taken or received, by any counsel or attorney, sheriff or officer, respectively, for any services rendered under the said Insolvent Act of 1864.

TORONTO, December 19, 1864.

TARIFF.

Fees to Solicitor or Attorney, as between party and party, and also as between Solicitor and Client.

	$ cts
Instructions for voluntary assignment by debtor, or for compulsory liquidation, or for petition, where the statute expressly requires a petition, or for brief, where matter is required to be argued by counsel, or is authorised by the judge to be argued by counsel, or for deeds, declarations, or proceedings on appeal...	2 00
Drawing and engrossing petitions, deeds, affidavits, notices, advertisements, declarations, and all other necessary documents or papers wnen not otherwise expressly provided for, per folio of 100 words, or under	0 20
Making other copies when required	0 10
When more than *five* copies are required of any notice or other paper, five only to be charged for, unless the notice or paper is printed, and in that case printer's bill to be allowed in lieu of copies, drawing schedule, list, or notice of liabilities, per folio, when the number of creditors does not exceed twenty	0 20
When the number of creditors thereiu exceeds twenty, then for every folio of 100 words over twenty	0 10
Every common affidavit of service of papers, including attendance	0 50
Every common attendance	0 50
Every special attendance on judge	2 00
For every hour after the first	1 00
To be increased by the judge in his discretion.	
Every special attendance at meetings of creditors, or before Assignee, acting as arbitrator	1 00
Fee on writ of attachment against estate and effects of Insolvent, including attendance	2 00
Fees on rule of Court or order of Judge	1 00
Fee on sub ad test., including attendances	1 00
Fee on sub duces tecum, including attendance	I 25
And, if above 4 folios, then for each additional folio, over such 4 folios	0 10
Fee on every other writ	1 00
Every necessary letter	0 50
Costs of preparing claim of creditors, and procuring same to be sworn to, and allowed at meeting of creditors, in ordinary case, where no dispute	1 00

	$ cts
Costs of solicitor of petitioning creditor, for examining claims filed up to appointment of Assignee, for each claim so examined	0 50
Cost of Assignee's solicitor for examining each claim required by Assignee to be examined	0 50
Preparing for publication adverisements required by the statute, including copies and all attendances in relation thereto	1 00
Preparing, engrossing, and procuring execution of bonds or other instruments of security	2 00
Mileage for the distance actually and necessarily travelled, per mile	0 10
Bill of Costs, engrossing, including copy for taxation, per folio	0 20
Copy for the opposite party	0 50
Taxation of Costs	0 50

No allowance to be made for unnecessary documents or papers, or for unnecessary matter in necessary documents or papers, or for unnecessary length of proceedings of any kind. In case of any proceedings not provided for by this tariff, the charges to be the same, as for like proceedings, as in the tariffs of the Superior Courts.

COUNSEL.

Fee on arguments, examinations, and advising proceedings, to be allowed and fixed by the Judge as shall appear to him proper under the circumstances of the case.

FEE FUND.

	$ cts
Every warrant issued against estate and effects of Insolvent debtors	1 00
Every other warrant or writ	0 30
Every summary rule, order or fiat	0 30
Every meeting of creditors before Judge	0 50
If more than an hour	1 00
If more than one on same day, $2.00 to be apportioned amongst all.	
Every affidavit administered before Judge	0 20
Every certificate of proceedings by Judge of County Court for transmission to a Superior Court or Judge thereof	0 50
Every bankrupts certificate	1 00
Every taxation of costs	0 15.

FEES TO CLERK.

	$	cts
Every writ, or rule, or order	0	50
Filing every affidavit or proceeding	0	10
Swearing affidavit	0	20
Copies of all proceedings of which copy bespoken or required, per folio of 100 words	0	10
Every certificate	0	30
Taxing costs	0	50
Taxing costs and giving allocatur	0	65
For every sitting under commission, per day	1	00
If more than one on same day, $2.00 to be apportioned amongst all.		
Fee for keeping record of proceedings in each case	1	00
For any list of debtors proved at first meeting, (if made.)	0	50
For any list of debtors at second meeting	0	50
Any search	0	20
A general search relating to one bankruptcy, or the bankruptcy of one person or firm	0	50

SHERIFF.

Same as on corresponding proceedings in Superior Courts.

WITNESSES.

Same as in Superior Courts.

TARIFF FEES OF NOVA SCOTIA.

INSOLVENT ACT, 1869.

It is ordered, under and by virtue of the 32 and 33 Vic., c. 16, entituled "An Act respecting Insolvency," sec. 139, that until further direction therein, the same costs, fees, and charges, shall or may be had, taken, or paid by and to Judges of Probate, Counsel, Attorneys, Solicitors, and Sheriffs, as are now payable to and taken by them in the Supreme Court and Court of Probate in this Province, under and by virtue of the Acts in that behalf.

HALIFAX, 13th Sept. 1869.

(Signed) W. YOUNG.
J. W. JOHNSTON.
W. F. DESBARRES.
L. M. WILKINS.

I, JAMES WALTON NUTTING, of the City of Halifax, in the Province of Nova Scotia, Prothonotary in and for the County of Halifax, of the Supreme Court of said Province, do hereby certify that the foregoing paper writing, headed "Insolvent Act, 1869," contains a true copy of an order made by the Chief Justice and Assistant Judges of said Court, whose names are thereunto subscribed, regulating the costs and fees to be charged in said Province under said Act.

(Signed) J. W. NUTTING, Prothy.

HALIFAX, 29th October, A. D. 1869.

FEES IN NEW BRUNSWICK.

We are authorized to state, that the Tariff of Fees existing in the Province of Ontario has been adopted by this Province, until after the next (Hilary) Term in February, 1870.

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IN PRESS :

THE

MAGISTRATES' ACTS OF 1869,

WITH

Notes Explanatory of the Text, Forms and Precedents.

By W. H. KERR, Esq.,

BARRISTER AT LAW.

The acts relating to the duties of Justices of the Peace and other Magistrates, out of Session, which come into force upon January 1st, 1870, are applicable to the whole of the Dominion of Canada, and modify more or less the present laws in every Province. The intention of this work is to give to Justices the text of the Acts, viz. of the

Summary Convictions and Orders Act,
Indictable Offences Act,
Summary Jurisdiction and Larceny Act,
Summary Jurisdiction in Criminal Cases Act,

annotated so thoroughly as to be a guide to Magistrates.

The work contains also an Introduction on the Law of Evidence; and Precedents are adduced throughout of decisions bearing on important points. The practical value of the work is greatly enhanced by a large collection of useful forms.

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